

Exhibit 3

1 THE CLERK: All rise.

2 (Jury is excused and the following takes place out of
3 the presence of the jury.)

4 THE COURT: Take five minutes.

5 (Recess.)

6 THE CLERK: All rise.

7 THE COURT: Get the jury.

8 THE CLERK: All rise.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Are you folks all right to go for awhile?
12 You feel strong? Okay, good.

13 Go ahead, Mr. McDaniel, call a witness.

14 MR. MC DANIEL: The plaintiff calls Peter Brownstein.

15 P E T E R B R O W N S T E I N, sworn.

16 DIRECT EXAMINATION BY MR. MCDANIEL:

17 Q Good afternoon, Mr. Brownstein.

18 A Good afternoon.

19 Q How old are you, sir?

20 A Sixty-one years old.

21 Q And where do you currently reside?

22 A I live in Palisades Park in an apartment, 54 Broad
23 Avenue, apartment 5B, as in boy.

24 Q And are you married?

25 A No, I am not married.

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1 Q Children?

2 A No children, no.

3 Q Share if you would with the jury, briefly, some of your
4 training and education?

5 A Well, I first attended Fairleigh Dickinson University for
6 electrical engineering for a couple of years. Then
7 transferred over to Union County Technical Institute for
8 computer science degree. Because of -- completed all courses
9 except for the humanities courses, never could write well, so
10 never got my degree because I could never finish my
11 humanities.

12 Q Are you currently employed?

13 A Basically self-employed. I'm starting up a couple of
14 businesses at the moment, computer-related.

15 Q And what is your vocation, what is it you do for a
16 living?

17 A Well, I'm a computer programmer, operations. Over the
18 years I've done almost everything, including a little systems
19 engineering in computer industry. I always worked in very
20 small companies, medium companies where your responsibilities
21 were more than your title were, was.

22 Like at Jamesway, I was -- my title was computer
23 operator, but I actually supervised a shift, the data entry
24 clerks, the other operators, maintained JCL and the check a
25 library.

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1 Q You just used the word JC1?

2 A Job control language. In the environment, the mainframe
3 computers, their operating systems as part of them have this
4 language that links together different programs and executes
5 them, links it with the system, links it with files, they read
6 in and read out and causes the execution of the programs.

7 It's how you get a process, run the process, basically.

8 Q Obviously you know Tina Lindsay?

9 A Oh, yes, for quite a few years.

10 Q How did you first meet Tina Lindsay?

11 A Actually, at Consumer Marketing Research back in, I
12 believe, '88, '89. I think it was '88, but may have been '89.
13 She was interviewing with the then owner, Nelson. What was
14 his first name? I forgot at the moment, Ginger's father. He
15 owned the company. He introduced me to Tina. She was in
16 men's clothing at that time.

17 Q Did you -- what was the nature of your relationship with
18 her while she worked at CMR?

19 A Well, it changed some. That's where we became friends.
20 We would go out and have lunch together almost everyday. We
21 could discuss things about the data center. She tells me
22 about what she did in the past and talk about almost anything.

23 I learned about her daughter, that she had children. I
24 learned quite a bit. We became very good friends and, in
25 fact, later on, I put her in as the executor of my living

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1 will. She literally had control of life and death over me.

2 Q We'll come back to that.

3 What were her duties at CMR?

4 A I don't remember. Her exact title alludes me, but I
5 believe it was she was in charge of the data center. She was
6 hired to be in charge of the data center. I was already
7 working there as an operator in those days.

8 Q So you worked for her?

9 A Technically, yes, but it was such a small place, it was
10 more team like than strict organization.

11 Q Now, how long did you work together at CMR?

12 A I worked there 18 months. Tina less. Maybe 12, maybe
13 15. I don't remember exactly how many months she worked, but
14 she was gone before I left.

15 Q When did you next meet up again with Tina?

16 A Actually we kept in touch intermittently.

17 Q In what fashion?

18 A Telephone calls.

19 Q Did there come a time where you had worked with her
20 again?

21 A Yes.

22 Q When was that?

23 A It was after the mainframe was installed at a company I
24 went to, hoping to improve my fortunes, Future Perspective
25 Clients, Incorporated, FPCI.

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1 Q What happened?

2 A Well, I was basically, except for consultant, some
3 consultants, a one-man data center. The work got heavy and I
4 asked John Raskin if I could have an assistant, somebody to be
5 an operator for me. I pushed Tina as the operator, even
6 though she didn't have any operations experience that I knew
7 of.

8 She was hungry, she didn't have a job, she was a friend
9 and I felt sure she could do the work. She knew enough, what
10 she didn't know, she could have learned, the job was simple
11 enough on computers.

12 Q And what was the nature of the business of Future
13 Perspective Clients?

14 A They resold data as mailing lists. They didn't
15 particularly process anything or create anything. They
16 basically were reseller, list broker. They had rented from R.
17 L. Polk a master file, millions of names with data on it and
18 my purpose was to take that file, build programs to select
19 records off of it that matched the profile of the type of
20 people the clients wanted to market to.

21 Q And what kind of information were you matching out of
22 that file?

23 A There were so many different fields and they were always
24 just one or two byte size codes. This is not a complete list,
25 I can't remember a complete list, nobody can. But there was

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1 age, there was income, there was at the time car ownership,

2 type of car ownership, marriage status, educational status.

3 There's much more.

4 The idea was simply that the client would provide you

5 with a profile of the person they thought they wanted to sell

6 to, the one that they felt most matched their best client.

7 This would be taken in by salesperson, given to me or Tina or

8 both of us at times. Some of these were complex orders and it

9 took both of us working as a team to satisfy them, and the

10 programs I wrote simply were put into codes, into control card

11 images.

12 At the time everything was image, card readers and

13 stuff had become non-existent almost and run the programs and

14 the program would automatically select out those records.

15 We'd select the number of records required to fill the

16 order, then print it out, mailing stickers that's stuck on the

17 mailing piece, labels or index cards or stockbrokers use or

18 sent it out in some electronic form for the company that

19 bought it to use.

20 Q Okay.

21 I direct your attention, if I could, to late 1993,

22 early 1994.

23 Did there come a time when Tina approached you with

24 some idea that she had?

25 A Oh, yes. That I remember very well.

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1 Q What happened?

2 A Well, a day or two before that, a client -- we were
3 presented with a client request. The first we ever had of
4 that type at FPCI.

5 Q What type was that?

6 A The data was to be selected by the person's ethnicity.
7 Tom wanted us, Tom Raskin, the owner, had created a list of
8 names of that particular ethnicity and select those records
9 out. I remember clearly Tina saying I can do better than
10 that.

11 Q Can you put a date on this?

12 A Well, let's see. Probably '93. The computer mainframes
13 weren't installed until 1991. We worked for awhile so, yes,
14 sometime in '93 I would say.

15 Q And you said Tina Lindsay told you she thought she could
16 do it better.

17 In what way?

18 A At the time she didn't say, but she came back next day or
19 a day or two and asked me -- we went into the little
20 conference room, a lunchroom, a jack-of-all-trades room and
21 explained her idea to me.

22 Q And what was that?

23 A It was fascinating.

24 Q What was that idea?

25 A Well, really it was to take the two present systems that

1 had been discredited by their inaccuracy, combine them with
2 certain features like using first names and suffix and
3 prefixes of last names and the point that she made the most
4 was the sequence and how these things were to be used so that
5 they would balance out the error factors that these older
6 systems had.

7 I told her immediately, she wanted to use something
8 that was all the rage at that time, a design concept called
9 rule-based expert system. It had already been used by other
10 people. It was just a general concept of how to design a
11 computer system.

12 But I told her all we had was COBOL and VSAM to work
13 with.

14 Q Before we jump into that, you said earlier that these
15 other methods had been discredited.

16 By whom, in what context had they been discredited?

17 A Use, people didn't believe at the time. The general
18 belief in the list industry was that compiled list names that
19 had their ethnic identified by inferred type methodology like
20 our system that we developed would not work because it was too
21 inaccurate. It would waste their money.

22 The idea of all of this data, whatever type of data it
23 was, was target marketing. Cut down your marketing cost by
24 targeting the audience that you were selling to, people most
25 likely to buy. In many cases that would be based on

1 ethnicity.

2 Q You used the phrase a moment ago, the list industry.

3 Can you describe for the jury what the list industry
4 is?

5 A Well, it's gone on a lot of change over the years, but --

6 Q Focus on the time -- start with the time we're talking
7 about, which is 1993.

8 A Basically they were companies that compiled information
9 on people legally, but they didn't really believe in privacy.
10 They would use it for marketing purposes. They would not sell
11 the information per se if they could help it, but basically it
12 was more of a rental type agreement than sale.

13 They would get a -- they would compile it together.

14 There were a few big compilers that would gather information
15 from multiple sources, compile them into these big files or
16 data bases, however you wanted to call them, and then rent
17 those things out to other people, like FPCI, who would had
18 clients like stockbrokers, real estate agents, what have you,
19 insurance companies, whoever wanted to target marketing and
20 then they would sell those names and addresses; just the names
21 and addresses most of the time, not the other information, to
22 these end clients and the clients would use it for marketing
23 campaign which usually sold on one-time use basis or special
24 arrangement multiuse, but it was basically rental in actuality
25 the way it worked business-wise.

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1 Q You said also that ethnic selections, marketing lists by
2 ethnic criteria was discredited.

3 Can you explain why?

4 A Accuracy. The final customers over the years really --
5 they found that they were wasting money buying them. So at
6 the time they believed that lists, the only lists that were
7 anywhere reliable were organization lists, society, Asian
8 society, Korean society, black contributors to black colleges.

9 They didn't believe, because of the failures that they
10 had, that inferred ethnicity onto a database would be accurate
11 enough and cover enough names of the database to be worthy of
12 buying. This thing we built together was a revolution.

13 Q The idea that Tina Lindsay had, how was it presented to
14 you? Was it spreadsheet, in what format?

15 A Verbally.

16 Q Verbally?

17 A Except for, I think, it was the back of an envelope. She
18 had a few names written on it. Like she had been working
19 things out, but that's how the first meeting went.

20 Q And what did the two of you decide to do after you had
21 that first meeting, if anything?

22 A Oh, lots of things. Really, to have something really new
23 like this to develop is a real treat, happiness, in fact. I
24 got carried away, sorry.

25 Well, we decided to start building it quietly on the

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1 side. Tina would do her research at work, bring it in and
2 data enter it into the computers, actually the mainframe we
3 had at work.

4 I set up a logon. She set up this file using what's
5 called ex edit. It's a text edit, part of the operating
6 system VM, that IBM sold, that we had installed at FPCI at the
7 time. It's just something generic that was part of the
8 operating system that allowed you to create just type in text.
9 You could create programs in it, you could create documents in
10 it, you could create JCL in it.

11 It's not like the word processors of today with all of
12 these functionalities that automatically line things and
13 paragraphs and stuff. This was a plain, very plain text
14 editor that would allow you to move things around and put
15 things in anything.

16 You could program it to do some special stuff, but the
17 basic thing was just typing, like a sheet of paper.

18 Q And what did you do, if anything?

19 A Well, I covered her when she was doing the data entry
20 during the day, did the work. I developed programs, I
21 developed the JCL, I defined -- I created the definitions of
22 the VSAM files necessary for the system.

23 In fact, I built a program to convert the form, what
24 she data entered into a form that would be usable in a COBOL
25 program or any similar program. In fact, we did testing.

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1 One of Tina's ideas I wrote and test was that one
2 program could access all of the reference files. That's what
3 we called the name and address files, and the rules files,
4 prefix and suffix rules of the last name. Take an input name
5 off of the list being encoded and run it against each file.
6 That proved to be impractical because of the nature of the
7 computer environment that we were working in.

8 So I broke up the functionality in separate programs,
9 added sorts and started using the files we had on hand. At
10 the time, the first programs, the data records that we
11 encoded, the name and address records, were in the standard
12 master file format, record format, that is, of the FPCI. I
13 didn't see any reason to change that so I just put that in the
14 programs at the time.

15 Q Let me ask you just to kind of back up for a second.

16 Why couldn't you just use the text file that Tina
17 Lindsay had prepared, the information she was typing into the
18 mainframe?

19 A Because the codes, it was like paragraphs, paragraph
20 headers. There would be this line with an asterisk, an ethnic
21 code, another asterisk, the name of the ethnic, some spaces to
22 your right would be a couple of codes showing religion, race.

23 What else was there? It changed over time, the
24 original format, and then there would be these four columns of
25 names, just names. No codes, no identifiers of anything.

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1 And then another header, they were of another ethnic
2 code. They were effectively blocks of names. You couldn't
3 create a sequential file out of that that could be used to
4 identify ethnicities because sequential files use each one at
5 a time. You couldn't even use an indexed file. Maybe, with a
6 lot of cross indexing, you could use it in a database file,
7 but that would be un -- wasteful design.

8 So what I had to do was to take the codes from the --
9 that one header line and take each name off of each other
10 line, each of the four names and combine it into one format, a
11 record as it's called, so that could be sorted in the proper
12 sequence if you're doing sequential, or if you have a file
13 with an index on it, again, proper sequence -- the file system
14 to search and an index file because most file indexes are
15 search binary.

16 Q Okay.

17 How did you do this?

18 A Wrote programs, in fact, and converted it all. Actually,
19 we stumbled over a problem that I had to write another series
20 of programs for, to create a JCL job stream, duplicates.

21 At some point, Tina started entering duplicate names
22 into the files, the same name a couple of times and the same
23 ethnic so I created programs that would eliminate those
24 duplicates.

25 Q How many programs did you write?

1 A I don't remember. Let's see, there were what I called
2 the support programs, the things that loaded. Four, three,
3 four. Let's see, the main, there were three original programs
4 to do the encoding. Four for loading the data. Looks like
5 about seven to start with and then that expanded.

6 The thing is that me and Tina would talk things over.
7 You should have seen her in those days when she found out
8 something interesting about a new name or a new rule, the
9 enthusiasm. It was very contagious, a little boring, though.
10 I wasn't very interested in the names themselves. Talking
11 about the programs, that was my bailiwick, but we learned it.

12 There was one thing that happened that had us both
13 making changes. When we had first sat down describing this
14 program and talking back and forth about how the system would
15 be set up, it was decided that there would be a two position
16 ethnic code.

17 As Tina researched African tribes, the sheer number
18 over filled the numerical numbers we had set aside for African
19 names and African American names categories, the sheer number
20 of tribes.

21 Before the research started, the reading of books and
22 what have you, neither Tina or me realized that there were so
23 many different tribal names and names derived from all these
24 different tribes in Africa, so that required a change.
25 Instead of a purely numeric coding system, we had to change to

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1 a combination number and alphabet coding system, alphanumeric
2 system.

3 Q Why were you working on this?

4 A Huh?

5 Q Why did you do this? Why did you work with Tina?

6 A Why?

7 Q Yeah, what was the purpose? Were you assigned to do it?

8 A No, she was a friend that brought a fantastic idea to me
9 that I could really sink my teeth in and build something
10 around. It was giving me a chance to be like my ancestors,
11 create something.

12 Q Did you have any plans for this thing that you were
13 creating?

14 A Actually before she had that light bulb affect, I had
15 talked to her because I wasn't happy with working for Tom
16 Raskin, about creating a company, but she wasn't too sure
17 about that for one thing. We were going to do the same thing,
18 at least I was proposing, to do the same thing that everybody
19 else was doing.

20 She said there had to be an idea that distinguished our
21 company. Then she had the ethnic idea and we went there.
22 It's basically to have my own company, to work for myself, to
23 be creative. This idea gave it to me and as we worked, things
24 came up.

25 Q Let me ask you, were the two of you, during this process,

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1 were you planning a business together or something else?

2 A No, we were definitely planning a business together.

3 When we planned the business, but a lot of times we were just
4 concentrating on developing this ethnic system. The point,
5 everybody seems to forget, is development like this is not
6 linear thing. Tina would find something, I'd have to make a
7 change in the program, I'd find something, I'd make a change
8 in the program. Things kept expanding and changing.

9 Tina's inventory program, program to printout uncoded
10 names, functions and the load program that permitted the
11 printing out of cross ethnic dupes, all of this we found out
12 during the research and development and trial and error of
13 testing, constantly back and forth.

14 Even in the inventory program, that wasn't really
15 envisioned at the beginning.

16 Q What do you mean by "inventory program"?

17 A Everybody asks me that and I'm always surprised at it.

18 An inventory program is simply a program that counts up
19 the records in a file and prints out a report of how many
20 records are coded this ethnic, how many are coded that ethnic,
21 same thing with religion.

22 Later on it was same thing with language, assimilation,
23 later developments that were added to the system. That was an
24 inventory program. Just like an inventory program is simply a
25 program that does an inventory. Like you go into your store

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1 and count everything up, you do an inventory of your store.

2 Q Only this counted names?

3 A Actually, this counted the codes on each of the records
4 and what ethnic counted codes and identified what ethnic that
5 code was in the printout.

6 Q Now, at this point in time, when you're developing the
7 program, what, if anything, had you told the owners of Future
8 Perspective Clients?

9 A Well, Tom and Micah were not the nicest guys to work with
10 or work for. Actually, I told them that Tina had this idea
11 and we developed it and it was a good ethnic and it could be a
12 good moneymaker, because they were bitching because they were
13 having a fight with the partner.

14 Q When did you first discuss this ethnic system with the
15 owners of FPCI?

16 A See, either '94 or '95.

17 Q What condition was the work in at the time that you
18 discussed it with them?

19 A Well, the basic files and programs were complete in their
20 basic form and we were on test runs successfully encoding name
21 and address files. So, yeah, late '94, early '95, around
22 then, most likely.

23 Also at that time because of their poor management, the
24 company was in problems.

25 Q Now, did the Raskin's -- what assignments -- withdraw

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1 that.

2 What did the Raskin's know about the work that you and
3 Tina were doing before you talked to them?

4 A To my knowledge, nothing.

5 Q Had the Raskin's given you any assignments -- withdrawn.

6 What happened next in this development process?

7 A Well, we just continued with what we were doing since
8 there was zero interest and instructions not to use it for use
9 in products that FPCI was selling, but me and Tina, we were
10 confident. We knew it was a great thing so we just continued.

11 Tina continued name research, I continued tinkering on
12 the programs, making improvements and running tests. When she
13 had, Tina had put in a sufficient number of names that she
14 needed and had the files verified, I would run the within
15 ethnic dupe elimination program and that would eliminate the
16 dupes and reorganize the files back into code alphabetic
17 sequence.

18 In other words, alphabetics within the codes, it would
19 create these blocks again and create a new file. I would load
20 that file down to the logon, on VM. I would delete the old
21 file and rename the new one the exact same name as the old
22 file so it was transparent to Tina so she could continue her
23 work.

24 Q We'll have a chance to talk a little bit about some of
25 the writing that you did in a little bit.

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1 So you continued to work on the file.

2 Did there come a time during 1995, when the situation
3 with LSDI changed?

4 A Yes.

5 Q What happened?

6 A Loretta showed up. Loretta Pogio had a doctorate and she
7 had worked with Norman Nelson. That's the name, Ginger's
8 father's name, Norman, Norman Nelson.

9 Q The owner of CMR?

10 A Yeah, the owner of CMR.

11 Back going, I don't know how far back, Ginger claims
12 that Norman started this in the '50s, but she left CMR and she
13 came to work as a salesperson.

14 Tina and me, because we knew her, respected her, liked
15 her, showed her what we had done. Tina especially. I printed
16 out the name files so Tina could sit down and go over the
17 names with Loretta Pogio because that was what her research
18 had been in, last names during CMR.

19 Q What else did you do with Loretta?

20 A At that point, well, struck up an old acquaintance sort
21 of thing. Then with Loretta's enthusiasm, Tom Raskin started
22 to be a real problem. There was a paper he distributed asking
23 us to sign that basically said anything we did when worked for
24 there, he owned it, we refused to sign it.

25 There was times where he would say that what a great

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1 system Tina and Loretta had developed. One time, first time I
2 heard that, I was walking down the hallway and when he said
3 it, I told him, no, Loretta had nothing to do with it. He
4 just shut up and left. I think he was angry because I
5 contradicted something.

6 Q You said earlier, and my notes show, that you had
7 described their response to the initial overtures that you and
8 Tina made as having zero interest?

9 A Yes.

10 Q Can you elaborate on that a little bit more, please?

11 A That was after the cut back. I had talked to Tom instead
12 of -- he asked me to fire Loretta -- excuse me. Wrong name.
13 I sometimes mix names up.

14 Tina, and it was either Tina or the secretary and I
15 told him, Tina could double as a secretary and still work with
16 me in the data center and they fired the secretary.

17 After that, one day Tina went into Tom, she told me Tom
18 wanted to use the system, she wanted him to pay us royalties.

19 I don't remember if this was '96 or '95. Probably '96,
20 yeah, '96. I know that in late '95, November, because of the
21 way the Raskin's were acting, Tina suggested that we should do
22 a copyright, so I printed out the files.

23 I asked her, what about the programs and she said, no,
24 not at this time. She wanted to protect what we had done.

25 It was also during this period that she told me the way

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1 things were going, we discussed, suggested to me, I didn't
2 really listen because I felt she knew business better than I
3 did, to keep my head down, avoid mentioning my involvement at
4 all, keep it that it was Loretta -- excuse me, Tina that was
5 involved with the system because of the increasing friction.

6 I do know that me and Tina had quite a verbal fight
7 over sending in a copyright because I had given her the
8 printout and she said it was done. This was at the beginning
9 of December, and she told me that she had taken this home.
10 She told me she wasn't going to send the package in until
11 January and I wanted it in there as quickly as possible
12 because I had seen Tom. Tom, I felt, wasn't to be trusted.

13 MR. MC DANIEL: We have a set of exhibits for you as
14 well.

15 THE COURT: Okay. Why don't we take five minutes?
16 We have been at this for about an hour. We'll take five
17 minutes.

18 THE CLERK: All rise.

19 (Jury is excused and the following takes place out of
20 the presence of the jury.)

21 THE COURT: How much longer do you think you have
22 with the witness, the rest of the day?

23 Who is next?

24 MR. MC DANIEL: I have Miss Lindsay for a short
25 while, but the rest comes in from Mr. Brownstein so it's

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1 somewhat extended. I'm not quite sure we'll finish everything
2 today.

3 THE COURT: It doesn't look like we are.

4 Mr. Brownstein, I want to ask you one thing, sir.

5 Your answers are -- there hasn't been any objection, but your
6 answers have been very expansive. I would suggest you listen
7 to the question and simply respond to the question.

8 THE WITNESS: Thank you, your Honor.

9 (Recess.)

10 (The following takes place out of the presence of
11 the jury.)

12 THE COURT: Let's get the jury. We'll go until about
13 four o'clock today.

14 THE CLERK: All rise.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Take your seats, folks.

18 DIRECT EXAMINATION CONTINUES BY MR. MCDANIEL:

19 Q Mr. Brownstein, I'd like to show you a document that has
20 been premarked as plaintiff's exhibit three.

21 Can you take a look at that, please?

22 Do you recognize that document, Mr. Brownstein?

23 A Yes, most of it. I printed it out from the FPCI
24 computers.

25 Q And the particular compilation that you have in front of

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1 you, do you recognize that?

2 A Except for these first few pages, yes. I recognize this,
3 it's the first copy sent into the copyright bureau for
4 registration.

5 Q I'd like to show you, if I could, another document that
6 has been marked as plaintiff's exhibit two and ask you if you
7 recognize that document?

8 A Yes. I have been shown this document several times in
9 the last couple of years.

10 Q What do you recognize it to be?

11 A Copyright submittal form for submitting material to be
12 copyrighted at the copyright office for the ethnic system, for
13 the first copyright.

14 Q When was the first time that you saw that document?

15 A I can honestly say only about two years ago.

16 Q You were aware that a copyright registration was being
17 made?

18 A Yes.

19 Q How was it that you only saw the certificate a couple of
20 years ago?

21 A I'm not sure I have an answer. I know it was being made,
22 but I was not curious. It wasn't important to me to see that.
23 There was a lot of other things, at least at the time it was
24 being made, of higher concern. Tina was taking care of it.
25 Tina was taking care of it so that was taken care of so it

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1 just didn't matter to me because Tina was taking care of it.

2 Q Did Tina give you a copy at the time that she was taking
3 care of it?

4 A No.

5 Q How did you come to see that certificate that you have in
6 front of you for the first time?

7 A It's my understanding it was among the papers I had been
8 keeping for TAP, had stored away from the first lawsuit, TAP
9 versus LSDI.

10 Q What do you mean by you have been storing papers?

11 A Just that. I would be given things by Tina, in this case
12 it was a big manilla envelope with a lot of other papers. I
13 put a rubber band around it and put it in the drawer and left
14 it there.

15 Q At or about the time that you provided those documents to
16 Miss Lindsay for the registration, in the months that
17 followed, did Tina ever hand to you something that said here's
18 a certificate of registration?

19 A I remember her telling me that the -- she had gotten
20 stuff back from the registrar office; seeing them, no.

21 Q Why didn't you ask to see them?

22 A Simple answer, for that time, why? Why should -- why?
23 Tina had taken care of it. I trusted Tina completely. It was
24 -- every time somebody asks me that, it confuses me because to
25 me it was simply Tina took care of it. I don't understand

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1 what the big thing is about doubt.

2 Q Let me have the big document.

3 Mr. Brownstein, if you would take a look at this,
4 exhibit five, and tell me if you recognize that document?

5 A It appears to be a copy of the second deposit for
6 registration at the copyright office.

7 Q And do you know where that document came from?

8 A Most of it I printed out from LSDI's computers. There
9 are a few pages up front that I didn't, I don't know where
10 they came from.

11 THE COURT: What's that exhibit, Mr. McDaniel? You
12 didn't tell us what the number was.

13 MR. MC DANIEL: I apologize.

14 That is plaintiff's five.

15 A Five.

16 Q Mr. Brownstein, if you could turn in that document, I
17 know it's rather large. Actually, we're going to use the
18 graphics to show it to you.

19 I'd like you to turn to exhibit five, page 757, which
20 we'll show you.

21 A I got page 757 up.

22 Q Right.

23 Now, do you recognize that particular page of this
24 document?

25 A Yes.

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1 Q What is that?

2 A This is the JCL for basically the first version of the
3 ethnic system with the functions broken up in the separate
4 programs.

5 Q There's a lot there so let's slow down.

6 JCL, JCL is?

7 A Job control language. This particular type of job
8 control language goes with IBM mainframe operating system
9 called VSE.

10 Q Okay.

11 And did you write this?

12 A Yes.

13 Q Can you tell us what it is that you've written here?

14 A Well, basically this is what they call a job flow,
15 multistep process laid out in JCL. First step is execute a
16 sort.

17 Let's see. Looks like sorting in name sequence, first
18 name sequence.

19 Q Where is that?

20 That screen is a touch screen that you can use to
21 identify a particular spot.

22 A Well, this here is the sort.

23 Down here is the control card specifying what it's
24 sorting and how it's sorting it and the size and block size of
25 the records, the blocks, control information for the sort.

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1 Q Okay.

2 A That's -- yeah. Here is the second step which is the
3 first name ethnic program, first version.

4 Here is another sort. This time in last name version.

5 You see all this stuff can get quite extensive.

6 Here in the control fields, you see what positions in
7 the record it's going to sort, how many positions, size and so
8 forth.

9 Q Okay.

10 Now, you said you wrote this?

11 A Yes.

12 Q Where did you write it?

13 A This would be at FPCI.

14 Q Okay.

15 Physically, where were you when you wrote it, in the
16 office?

17 A Yes, in the office at a terminal. There was no
18 teleprocessing into FPCI.

19 Q Obviously this program was stored somewhere. Where was
20 it stored?

21 A Originally on FPCI's mainframe.

22 Q On a storage device?

23 A Oh, disk device.

24 Q And it could be retrieved from that disk device?

25 A Yes.

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1 Q What language is this program written in?

2 A Well, this isn't really a program. This is just a job
3 control language, a flow of different programs.

4 If you notice here, this statement that says "execute,"
5 that's a command to process the program that's named there.
6 This is the way you ran programs. It isn't a program in and
7 of itself.

8 Q Is there any discretion at all in the way this program is
9 run?

10 A Quite a bit.

11 Q How would you exercise discretion in writing this?

12 A Well, this first name ethnic program, you could change it
13 from using tape as the storage media for the work files, to
14 using disk. You could change the program to be called
15 program; sort we call it.

16 You could change the JCL. This JCL has some unique
17 features in it.

18 Q Is there any creativity in writing JCL? If so, what is
19 it?

20 MR. KLAAPROTH: Objection, calls for lay opinion.

21 THE COURT: Can you answer the question?

22 THE WITNESS: Pretty much.

23 THE COURT: Overruled.

24 Go ahead.

25 A Some, yes, but in JCL, you do have to follow a lot of

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1 basic rules because of the simplicity of it, but, yes. The
2 creativity is simply what you are doing, what process do you
3 want to run, not -- and what devices you want to use for the
4 files.

5 THE COURT: May I ask a question because I'm
6 confused?

7 The document you're looking at, Mr. Brownstein, is
8 page 757 of 842 pages, correct?

9 THE WITNESS: Yes.

10 THE COURT: What are the 842 pages collectively?
11 What is that?

12 THE WITNESS: That, I said before, was the deposited
13 copy for copyright at the copyright office. This is part of
14 the second copyright deposit.

15 THE COURT: And this page 757 that you say you wrote,
16 when did you write it?

17 THE WITNESS: Since it's the -- I would say well
18 before '96 because this was at the end of '96 and this was
19 already being used quite a bit. So '95 maybe.

20 THE COURT: Okay.

21 Q 798.

22 Mr. Brownstein, I have seven -- page 798 in front of
23 you, which is somewhat deeper back in this deposit copy.

24 I would ask you if you recognize that particular page
25 and we'll have some additional pages that we'll discuss?

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1 A Oh, yes. This is the beginning of an actual program
2 written in COBOL. My first tentative and crude forms of
3 inventory and name printout.

4 Q What was the purpose of this program?

5 A Well, it was -- on later pages you'll see the logic, but
6 the purpose was to allow somebody to select records off or the
7 whole file of a name and address file that had been sent
8 through the ethnic system to count up what it's been done.

9 It also has a second function of counting by individual
10 names, how many times a name occurred on the file and was
11 coded this particular ethnic code.

12 Q Peter, I was actually looking for the program that
13 creates -- withdrawn.

14 Did you write a program, sir, that would create an
15 ethnic record file?

16 A Oh, yes.

17 Q What was the number of that program?

18 A I think ethnic three or ethnic one.

19 Q Do you want to take a moment and look through the
20 document that you have?

21 A This is going to get messy.

22 Q I don't want you to explain the wrong program again.

23 THE COURT: Are you offering this entire exhibit into
24 evidence?

25 MR. MC DANIEL: I'm going to, Judge.

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1 THE COURT: Is there any objection to it?

2 MR. KLAPROTH: My only objection is juror confusion.

3 It's a large document and it just looks like computer
4 programs.

5 MR. MC DANIEL: It's kind of got to be.

6 THE COURT: I'm just asking the question.

7 A You can start with page 759. That will give you the
8 names of the programs, ethnic five.

9 This is job control language used to load the data into
10 the VSAM files for preparation for encoding a job, encoding a
11 file.

12 Q Okay.

13 A So it was ethnic five.

14 Q Okay.

15 You just used the phrase called VSAM?

16 A Yes.

17 Q What is that?

18 A It's a file management methodology. All computers have
19 them, no matter what size. They're used for controlling the
20 storage data.

21 In the case of VSAM, it was an upgraded version of an
22 indexed access method. It's an acronym standing for Virtual
23 Sequential Access Method.

24 Q What does it do?

25 A On a mainframe, it allows you to load files into this

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1 VSAM catalog which it keeps track. It allows you to index
2 them, allows you to put files you read sequentially, allows
3 you to read them, what's called other methods.

4 Basically it's a method of storing files and managing
5 them. There's a lot of things it will do for you.

6 In fact, it's the one that does -- when you request a
7 particular record from a file, all you have to do, index file,
8 is give it a key and it will do the searching of a file for
9 that particular record for you. A lot of the housekeeping,
10 when it comes to files, is done for you with VSAM. It's
11 basically a forerunner for a lot of the data bases out there
12 today.

13 Q Okay.

14 So you had mentioned a moment ago ethnic five?

15 A That's a program I wrote.

16 Q One second. Let me catch up with you.

17 If you could turn to page 788 in your document?

18 A Got it.

19 Q What is it that begins at page 788?

20 A That's beginning of the program name ethnic five. Its
21 purpose was to take what I later started to call human
22 readable form data, those text documents we talked about, and
23 convert them into record format and load them into a VSAM
24 file.

25 It also took advantage of certain functions of VSAM to

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1 identify errors in the file, like duplicate records where the
2 same name was identified as two different ethnicities.

3 Q Let's focus on the first thing.

4 You said it took the human readable and made it into?

5 A Records, records format.

6 Q Why was it necessary to do that?

7 A Sorry. I'm so used to programming, I sometimes forget
8 everybody doesn't know.

9 Simple. On an index file, you specify what the index
10 is. In this case it was the name. Name was the index. When
11 I was looking for a match of a name in the encoding system,
12 whether it was first or last name, what I do would be to use
13 the functions of VSAM to search the file to ident -- to match
14 those names, but what VSAM actually does, instead of reading
15 all the files, it reads an index, like an index in a book, to
16 find something specific, and match it.

17 Q Okay.

18 So you needed something -- there was a lot there.

19 You're taking the human readable, you're putting it into a
20 data file?

21 A Yeah, but because it needs a key, each record is
22 separate, independent, so each name had to have the ethnic
23 code, religion and race attached to it in just one record, not
24 a part of a title on a paragraph.

25 Q Who designed the format of the record file?

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1 A I did.

2 Q How did you do that?

3 A I just did. It's normal part of programming. You see
4 how big the data becomes.

5 In this case, discussion with Tina and me establish
6 that the name field would be 20 positions in size. We got
7 surprised. During research, we were caught by some Polish
8 names. Originally we had it at 15, we had to expand it to 20
9 because of the Polish testing research, what have you. You
10 always get surprises when you're developing something.

11 A code, two positions; religion code was one position,
12 so like put one position right here, religion, the race code.

13 MR. KLAPROTH: Objection, your Honor. There is no
14 question pending right now.

15 THE COURT: Well, I suppose he is right about that,
16 Mr. McDaniel. Why don't you put a question and get an answer?

17 MR. MC DANIEL: Okay.

18 Q If you would look at the section that is denominated
19 01-REC, what is it that you were doing in this section of the
20 program?

21 A This section was -- I was defining how the record would
22 look, telling the program where everything was placed in the
23 record. This is my shorthand.

24 Q How do you tell the program where the information is
25 placed in the record?

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1 A You see these 03s, they're called levels. This EF is my
2 shorthand for ethnic field dash name; picture, 20 positions; X
3 is a code indicating alphanumeric field. So it's 20 positions
4 and you can put either numbers or letters into that field.

5 Q Okay.

6 The EF-name that you just mentioned, what is that?

7 A That's the name of that field that's used within the
8 program.

9 Q Okay.

10 Who wrote that?

11 A I created that. It's my program.

12 Q And, again, with this program, where did you physically
13 write it?

14 A Terminal at -- on the mainframe at FPCI.

15 Q Okay.

16 Moving down to the sort file section of this, it says
17 SD, sort file, do you see that?

18 A That's just S dash and my shorthand.

19 Q What is it that you were doing here?

20 A Oh, this is what's called is defining the fields for an
21 internal sort. I was -- in the logic section of the program
22 was going to call a sort, to sort the records in the proper
23 sequence for loading into the VSAM file.

24 Q Why would you have the program do that?

25 A The index. Indexes are always better in sequence, a

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1 proper sequence.

2 Q Why did you put it there? Withdraw that.

3 Did you have, in preparing programs, do you have any
4 discretion about where you put different functions such as
5 this sort that you described?

6 A In COBOL, there are what's called divisions and sections.
7 Each one is designed for specific information about what
8 you're doing.

9 This particular section is where you define the files
10 you're going to be working with. The record layout, you
11 define it to the program.

12 Q Who defines it?

13 A The programmer. I do in this case. All that's required
14 is it be put into proper form.

15 Q How do you define it?

16 A These 01 and 03 levels, that's how you define it. Also
17 what's above it.

18 Q Physically, how do you define it?

19 A Well, if it's an outside file that you're reading from
20 something else, you get a format from that other person or if
21 you can, you look at the raw data and define it by I.

22 Q Okay.

23 A But in the case of files that you're creating yourself,
24 you make it up. You design it.

25 Q How do you express what it is that you've made up or

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1 decided?

2 A In this particular programming language, it's what you
3 see on the screen. It's what you create, names.

4 The one thing about COBOL is it's very English like so
5 you have the ability to name it whatever you want.

6 Q And you physically have to write the code to name it?

7 A When you're working with terminals, yes, definitely. I
8 never used code generator of any type.

9 Q Next page, 789.

10 If we can just continue down with this, I don't want to
11 drag you through the whole thing. Take a look at the working
12 storage section.

13 A Oh, working storage section is simple.

14 Q Let me ask you a question.

15 First of all, if you can define what the working
16 storage section is?

17 A That's areas in memory within the program you're defining
18 as different fields for you to use -- well, actually the
19 program to use for whatever processing you've designed it to
20 do.

21 In this case, there is a mixture of fields, fields for
22 counting, fields for holding data and memory and edit field
23 for printing out and field for returning status codes from the
24 VSAM section.

25 Q Could you point those out to us?

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1 A The first one, FS, it was named file for returning -- is
2 the fields that the return codes from the VSAM system would
3 come in.

4 The next --

5 Q Stop there for one second.

6 Return codes from the VSAM file, what does that mean?

7 A Well, the VSAM file system would send back messages to
8 position codes, to your program telling it whether the
9 function is done correctly and if there was an error, what
10 type of error.

11 Q Okay.

12 A You can ignore it or you could provide a field in your
13 program so you could see what the code was.

14 Q Okay.

15 So this section, if I understand you correctly, creates
16 such an area in the program?

17 A That one line, yes, just that one line.

18 Q Is that operational? Do you have to have --

19 A Oh, very operational, but program -- professional
20 programmers always do that, safety factor and it's great for
21 tracing down errors.

22 Q Okay.

23 If you could move down to where it says 01, WS, code
24 table.

25 Do you see that?

1 A Yes.

2 Q What is that?

3 A Just an area I created to store information temporarily
4 in the program to allow the program to do its work. Those
5 paragraph headers I was mentioning later that show up in some
6 of the earlier pages in this document, I would have to store
7 the code from them, the name of the ethnic, the religion and
8 race and each time I read another line, and read the four
9 names, I would have to write these codes.

10 So this area is where I store it, my scratch area,
11 scratch work like you'd have a pad to write things down
12 temporarily. Same thing with the program.

13 Q What was the net result of this program when it had been
14 run, when it had been successfully run? What did you achieve
15 with it?

16 A I had a reference file that could be used by the ethnic
17 system to identify the ethnic of people on name and address
18 lists.

19 Q And what information was in the ethnic file?

20 A Depending on the file, would depend on the list. This
21 particular one would load the name files. In other words, one
22 reference file for first names, one for last names. It was a
23 different program to load the prefix and suffix rules.

24 Q Now, if I can direct your attention to -- I just want to,
25 if we could, define where within this document your work

1 begins, the work that you wrote.

2 THE COURT: By "this document," the 800-some-odd
3 pages of exhibit five?

4 MR. MC DANIEL: Right.

5 THE COURT: Okay.

6 Q If you could?

7 A Well, stuff that I did on my own --

8 Q Let me rephrase that.

9 Can you show us in this document where the programs are
10 that you wrote?

11 A Starting with JCL at 757 and continuing through until the
12 end of the document, the programs, the JCL, I wrote all that.

13 THE COURT: Mr. McDaniel, whenever it's logical to
14 break, we will, so I leave it to you.

15 MR. MC DANIEL: I was about to start something that
16 would take awhile. This is probably a good time.

17 THE COURT: Let's break for the day, folks. I'm
18 going to release you for the day.

19 Please travel safely. Don't discuss the case with
20 each other or anyone else. Keep an open mind and we'll see
21 you tomorrow morning.

22 We're going to go tomorrow until about three o'clock
23 based upon my schedule. So as soon as everybody is here ready
24 to go tomorrow morning, we'll have you in the courtroom. We
25 appreciate your attention.

1 THE CLERK: All rise.

2 (Jury is excused and the following takes place out of
3 the presence of the jury.)

4 THE COURT: You can step down, Mr. Brownstein.

5 I'd like counsel to stick around for a minute.

6 MR. MC DANIEL: In terms of this, I was not going to
7 attempt to publish this to the jury.

8 THE COURT: Let's let the jury go and we'll talk
9 about this. Don't go anywhere.

10 I just want to get a sense on case management. We
11 have Mr. Brownstein's testimony, he'll be cross-examined and
12 then you're calling Miss Lindsay?

13 MR. MC DANIEL: She will be very short.

14 THE COURT: And then do you have any other witnesses?

15 MR. MC DANIEL: I do not have any other witnesses.
16 My case should be in by 11:30 or 12.

17 THE COURT: What do you have?

18 MR. KLAPROTH: I mean, I'm not going to cross-examine
19 Miss Lindsay when he calls her. I'll start my case right
20 after and call her back, do my direct then.

21 THE COURT: Okay.

22 Do you have any other witnesses?

23 MR. KLAPROTH: No, just Miss Lindsay.

24 THE COURT: My request to you is to start thinking
25 about a jury charge because if we're going to get the case to

1 the jury as you predicted on Thursday, this thing has to be in
2 pretty final form by sometime tomorrow.

3 I also, having learned about the case more than I
4 knew before today, would urge upon you to take a look at the
5 jury charge and limit it to that portion of copyright law
6 which pertains to this case, because if you let it go into its
7 natural habitat, it's going to be much longer than it needs to
8 be.

9 The issues in this case are very discreet and I think
10 we should explain them to the jury in very simple language.

11 MR. MC DANIEL: Okay.

12 THE COURT: Thanks a lot.

13 See you tomorrow morning.

14 (Trial adjourned until Wednesday morning, February
15 15, 2012, at 9 a.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 10-1581

PETER BROWNSTEIN, :
Plaintiff, : TRANSCRIPT OF PROCEEDINGS
-vs- :
TINA LINDSAY and E-TECH, : TRIAL
Defendants. :
:

Trenton, New Jersey
February 15, 2012

B E F O R E:

THE HONORABLE JOEL A. PISANO
UNITED STATES DISTRICT COURT JUDGE
and a JURY

A P P E A R A N C E S:

MC DANIEL LAW FIRM
BY: JAY R. MC DANIEL, ESQ.,
BONNIE PARK, ESQ.,
For the Plaintiff.

KIRSCH, GARTENBERG, HOWARD
BY: JESSE KLAPROTH, ESQ.,
For the Defendants.

Pursuant to Section 753 Title 28 United States
Code, the following transcript is certified to be
an accurate record as taken stenographically in the
above-entitled proceedings.

S/Joanne M. Caruso, CSR, CRR
Official Court Reporter
(908) 334-2472

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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1 February 15, 2012

2 (The following takes place out of the presence of
3 the jury.)

4 THE CLERK: All rise.

5 THE COURT: Are we all set?

6 Do we have anything to discuss? No? I think we
7 should just keep going and talk about matters as the testimony
8 resumes

9 Let's get the jury.

10 By the way, in this replevin complaint, the programs
11 that are being sought, the same as the documents being
12 copyrighted or something different?

13 MR. MC DANIEL: They're somewhat different.

14 THE COURT: Okay.

15 THE CLERK: All rise.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Good morning, folks.

19 Everybody is here and prompt. Did you make it in all
20 right?

21 How long did it take you from Sea Bright?

22 THE JUROR: An hour and 40 minutes.

23 THE COURT: Okay.

24 Mr. Brownstein, let's go.

25 P E T E R B R O W N S T E I N , previously sworn,

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1 resumes the stand.

2 THE COURT: We're going to keep going on the case and
3 as we get deeper into the day, we'll discuss scheduling and
4 we'll see how we're doing.

5 Mr. Brownstein, good morning.

6 THE WITNESS: Good morning.

7 It's a very nice morning.

8 THE COURT: You're still under oath.

9 DIRECT EXAMINATION CONTINUES BY MR. MCDANIEL:

10 Q We left off yesterday, generally speaking, we were
11 talking about record files and some of the work you had done.

12 I'd like to show you, if I could now, the document,
13 it's a demonstrative exhibit, but can you describe for the
14 jury what this is?

15 A It's basically the record format used in the encoding
16 system set up positionally to show the actual way it lays out
17 in the record.

18 Q Okay.

19 And the dashes across the bottom, what do those
20 represent, if anything?

21 A Positions.

22 Q Okay.

23 A Information as normally fill up all the space in the
24 field provided for it.

25 THE COURT: Excuse me.

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1 Is this an exhibit, what we're seeing on the screen?

2 MR. MC DANIEL: It is not.

3 THE COURT: Okay.

4 A Provided for it so that the dashes indicate the spaces
5 allowed. In this case, 20 for the name and two for the code.

6 Q I'm showing you another PowerPoint here.

7 Can you explain what is represented here?

8 A This is the same type of record layout with fixed fields,
9 fixed length for the information to be put in. There's the
10 name field of 20 positions on the left-hand side going right,
11 two position code field, another code field and a third code
12 field, each one having one position.

13 Q What is in the two position code field?

14 A Ethnic code.

15 Q Okay.

16 And next to 01?

17 A Yes.

18 Q And to the right of that?

19 A Religion.

20 Q Okay.

21 And to the right -- and that's represented by the P?

22 A P, yeah. That would be Protestant.

23 Q And to the right of that?

24 A That would have been the race code.

25 Q Which is in this case W?

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1 A W, white.

2 MR. KLAPOOTH: Your Honor, could the witness identify
3 this? Is this just a demonstrative or does it come from one
4 of the exhibits?

5 THE COURT: That's why I asked the question I asked.

6 MR. MC DANIEL: That's the next question.

7 Q Does this actually come from one of the exhibits?

8 A Yes. These are the record layouts I created for the
9 ethnic system to use in the reference files.

10 Q Is it printed in this version within the exhibits?

11 A The file descriptor is, but not the actual data.

12 Q Okay.

13 And, finally, if you could take a look at this
14 PowerPoint slide and explain for the jury what is represented
15 here?

16 A It's another representation of a different reference file
17 used in the ethnic system. This time it's the five position
18 code field for suffixes. You have five positions for the end
19 of the name and two position codes.

20 Q I'm going to show you exhibit, plaintiff's exhibit five,
21 which we talked about yesterday.

22 My question to you is: Can you compare what's
23 demonstrated in this demonstrative exhibit with what is
24 actually in that registration packet?

25 A Yes, of course.

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1 Q Okay.

2 Tell us what page you're referring to, please.

3 A Let me find the program first.

4 Page seven -- wrong page, sorry.

5 A lot of programs. Here we go.

6 788.

7 Q And what is depicted on page 788?

8 A The beginning of ethnic code five program containing some
9 of the file descriptions, layouts of the records of the files.

10 The very first one is the layout for the first displays
11 you showed me with the names.

12 Q Now, we're going to bring up page 51.

13 Do you recognize this particular page of the document,
14 page 51?

15 A Part of the left-hand side is cut off, but, yes, yes.

16 It's the text form of the names that Tina typed in to be
17 created into a reference file.

18 Q How is what we see on page 51 of this document different
19 than the record files that we looked at, the demonstrative
20 exhibits that we looked at?

21 A Well, if you look at the very first line up here, that
22 has an asterisk, 02, saying Scotch.

23 Q Over here?

24 A Yeah. Thank you.

25 That indicates the code that all the other names below

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1 that until you reach another line like that asterisk line
2 would indicate that all these last -- first names would
3 indicate they were Scottish in that number up there, just like
4 a header on a paragraph in a document. That would identify
5 what these names were referring to. In this case Scotch.

6 Q And it says here "unique first name file."

7 Do you know what that means?

8 A Yes. In order to identify a name and address list, the
9 ethnicity of the person, we had to work with very unique
10 names, names that could be definitely said that were over 95,
11 98, almost purely used by people of that dissent, that ethnic,
12 Scotch, Irish, what have you.

13 Q And do you know how this list of names was developed?

14 A This particular list, yes.

15 Q How was it developed?

16 A Tina did the research in books, libraries, online,
17 internet, looking for names that were descended from these
18 particular ethnicities. Also did some cultural research and
19 historical research because we found that names, spelling of
20 names particularly, which the system is key to spelling,
21 changed over the period of time.

22 So we had to sort of go through history to find the
23 modern version of them.

24 Q And you said she researched in libraries.

25 Other third-party materials that she did her research

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1 in?

2 A Oh, yes. I don't even know all the third-party
3 materials.

4 Q Okay.

5 Now, we've talked a bit about the programs that were
6 included in this second registration.

7 Can you summarize what is in that section of the
8 registration that is your work, what are the programs that
9 you've written, in an overview fashion?

10 A Well, there's basically two sets of them. One is the
11 actual programs that take files and apply the ethnic encoding
12 to them and the other set are what I call maintenance and
13 support programs, programs that take this text file and
14 convert it over into a usable format by the encoding programs,
15 programs that eliminate duplicate names within an ethnic,
16 eliminate cross ethnic, identified cross ethnic dupes for
17 manual determination which is correct and load them into the
18 VSAM file system in preparation for use by the actual part of
19 the system that encodes files with ethnic.

20 Q Is there a single version of the programs in there or
21 multiple versions?

22 A With the utilities, there seems to be single versions.
23 With the actual ethnic encoding, two versions.

24 Q Aside from the copies that are included in this program,
25 the printouts that are included in this registration deposit

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1 copy, do you personally have possession of any of the ethnic
2 programs?

3 A A few of them, but not all of them.

4 Q And how did you come to have possession of the ones that
5 you do have?

6 A I found them on a floppy disk in my house. As to how
7 that came to be, I don't have any sure knowledge. I can make
8 assumptions, but I have no sure knowledge.

9 Q All right.

10 So you said there are two versions of the ethnic system
11 in that packet of materials.

12 Can you identify those? I know it's a little tedious,
13 but I'd like to go through and get into the record the pages
14 where those are.

15 A Okay.

16 Q I see you have some materials with you?

17 A Yeah.

18 Q Do you need those materials to refresh your memory?

19 A Not really, but for details if you wish, I would need to
20 use them.

21 MR. MC DANIEL: If there is no objection, I ask that
22 you do that, it will go faster.

23 A Okay. The first version we created was actually a
24 program to work with the standard record format that was being
25 used at LSDI at the time. One of the standard things I did at

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1 data centers that I ran was to create a master record format
2 so all the programs could read any of the files present.

3 To simplify things, I just used this program, so this
4 is a simple one. It had sort of the first names, first name
5 encoding program, last name encoding program and the
6 geocoding.

7 Q What is the name of that program?

8 A This is JCL, this would be ethnic 01, JCL.

9 Q And the pages?

10 A 757.

11 Q Through?

12 A 758.

13 Q Okay.

14 So we have that program.

15 What other versions did you write of that program, if
16 any?

17 A Later on we started getting in and realizing a lot of
18 people had different record formats and we couldn't change the
19 whole system to accommodate them all. So I did a second
20 version of the system and added two programs to the system.

21 One basically is a subset, extract program and the
22 other is a match back program. The extract program simply
23 read the file to be encoded, extracted out the necessary
24 information for the ethnic system and added on match code to
25 the record of that -- each record of that file to be encoded.

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1 At the same time, I created a small simple record
2 layout to be used internally with the ethnic system that
3 contained just the necessary fields for the ethnic system plus
4 the code to match them back. That record system was used to
5 run the data through the ethnic system and then the other
6 program was -- there was a sort, to sort into code sequence,
7 would match up the records and transfer the results of the
8 encoding to the original record.

9 Thus, you could give client back his original data with
10 your additional codes added on to the end in the same sequence
11 without disturbing his original data and not having to do a
12 lot of programming every time you got a new customer.

13 Q Okay.

14 Going back to the first thing that you described is the
15 JCL ethnic one on pages 757 to 758.

16 When did you write that?

17 A Sometime in 1994, '95, somewhere around there. I don't
18 remember exactly when.

19 Q And where -- where did you physically write that program?

20 A This would be at FPCI.

21 Q Okay.

22 And what did you use to write the program?

23 A The ex edit. I would just type it into the editor. I
24 had my own logon into the VM system and just typed it in,
25 line-by-line.

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1 Q And it was stored at FPCI?

2 A Yes, stored and I'd log on at FPCI, yes.

3 Q Now, the second program that you just described, the
4 match back program, the extraction match back, do you have a
5 copy of that in the documents in front of you?

6 A Yes.

7 Q And where is that?

8 A I don't understand the question.

9 Q Where within the document is it?

10 A Okay. The subset program would be starting at page 831,
11 running for page 834.

12 Q Now, you mentioned that there were two versions of the
13 ethnic system that you did.

14 Can you please tell us what portions of that document
15 were included within the first version of the ethnic system
16 that you wrote?

17 A Which document?

18 Q The deposit copy that you have in front of you.

19 A The deposit copy contained both copies.

20 Q Okay.

21 What I want to do is get into the record what pages are
22 the first version and what pages are the second version so if
23 we can start with the first version, can you identify for us
24 what the components were of the first version and where
25 they're located within the deposit copy?

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1 A Okay. The job control language ran from pages 757 to
2 758.

3 The first name version of the program started at 795,
4 went to 797.

5 Q Okay.

6 What was the name of that program?

7 A This is program ethnic seven.

8 Q Okay.

9 A Sorry. The last -- oops. Let's see.

10 This is the last ethnic four. The last name encoding
11 program first version, starts at 780, runs for -- to 787.

12 The geocoding program, the first version starts at 808
13 and runs to page 814.

14 Q What's the name of the geocoding program?

15 A Ethnic nine.

16 Q Are there any other programs that were included in that
17 first version?

18 A For the encoding?

19 Q Yes.

20 A No.

21 Q Okay.

22 A But the utility programs are present with the first
23 version.

24 Q Okay. We'll have a chance to come back to the utility
25 programs.

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1 Let's move on to the second version of the program
2 that's included there.

3 A Okay. JCL, to run the second version started at page 764
4 and 765 and 766. 764 through 766.

5 Q Okay.

6 A The -- sorry.

7 The subset program, ethnic 14 starts at page 831 and
8 runs for -- the paper is sticking together. 834.

9 The first name program starts at 815, runs until 817.
10 That's program name ethnic ten.

11 The second name program, second version, ethnic 11,
12 starts at page 818 and ends on page 826.

13 Ethnic 15, which is the geocoding program of the second
14 version, starts at 835 and ends on page 842.

15 The match back program, ethnic 13, starts on page 827
16 and ends on 830.

17 Q Okay.

18 Who named these programs?

19 A I did.

20 Q And when did you write the second version of the ethnic
21 encoding programs?

22 A That was either '95 or early '96.

23 Q Okay.

24 Now, briefly I think you mentioned there were a couple
25 of utility programs. Can you just give us a description of

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1 those?

2 A Okay. There are two programs designed to load the name
3 files, the files using whole names, like the first name
4 reference file, last name reference file onto the VSAM files
5 and then there was one file, a program to load the rules
6 because they were an entirely different type of data. They
7 had to be handled differently.

8 Q Okay.

9 A So I wrote a different program.

10 Q Let's start with the program designed to load the whole
11 name.

12 What was that called?

13 A Ethnic five.

14 Q Okay.

15 And when did you write that?

16 A That would probably be in the '94, '95 period when we
17 were first starting for the testing and development. Once we
18 got some -- the names and programs done.

19 Q And the program to load the rules, what's the name of
20 that program.

21 Before you do that, can you identify the pages on which
22 ethnic five is located within the deposit copy?

23 A That would be 788 starting and ending on 791.

24 Q Okay.

25 And the program to load the rules, what was the name of

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1 that?

2 A That was ethnic six, page 792 through page 794.

3 You want where the JCL is also?

4 Q Sure.

5 A That would be page 759 through 762.

6 Q Okay.

7 Now, I have something, a demonstrative evidence in
8 front of you, Mr. Brownstein.

9 Can you tell us what is represented there?

10 A Yes, slightly incorrect flow of the second version of the
11 ethnic system.

12 Q Where is it incorrect?

13 A You see the subset box that says subset?

14 Q Yes.

15 A Two lines coming out?

16 Q Yes.

17 A One to the sort and one down to geocoding?

18 Q Yes.

19 A The second line to the geocoding shouldn't go to
20 geocoding, it should go to a box after the geocoding marked
21 match back.

22 Q Okay. I'll take credit for that one.

23 Can you just quickly explain what is represented in
24 this document?

25 A Basically it's our second version of the ethnic system

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1 that we eventually sort of standardized on the, on the
2 mainframe where we extracted usable -- the necessary data from
3 the input file and put into internal standard record format
4 for the use of the ethnic system.

5 Q That's in the subsetting?

6 A That's subset box.

7 Q And that's followed by sort.

8 What is going on there?

9 A That would sort the data into first name sequence.

10 MR. KLAPROTH: Your Honor, I'm going to object to the
11 continued use of the demonstrative. The witness testified
12 that it's incorrect so I don't know where it's incorrect or
13 what's incorrect about it, but now he's using it as a
14 demonstrative.

15 THE COURT: Is it incorrect in any other respect than
16 what you described?

17 THE WITNESS: No, your Honor.

18 MR. KLAPROTH: Could he point out what is incorrect
19 again?

20 THE WITNESS: Just a minute. Excuse me, your Honor.

21 Yes, there is one. That prefix and suffix, that's
22 part of the last name. There is no sort in between them.

23 THE COURT: So as I understand it, one of the sort
24 boxes should not be there and on the third row, the bottom
25 most row there should be another box?

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1 THE WITNESS: Yes.

2 THE COURT: Did you prepare this?

3 THE WITNESS: No, I did not.

4 MR. MC DANIEL: I'll take credit for it.

5 THE COURT: What do you want to do about it, Mr.
6 McDaniel?

7 MR. MC DANIEL: We'll withdraw it.

8 THE COURT: Okay.

9 Q Now, you testified yesterday, as I recall, that you had
10 provided copies of these programs to Miss Lindsay in late
11 1996?

12 A That would be first set of copies would be late '95.

13 Q Okay.

14 The materials that are included in plaintiff's five
15 that we just went through, which was the registration, second
16 registration, when did you provide copies of the programs that
17 are included in that document?

18 A This would be mid-'96.

19 Q Okay.

20 And for what purpose did you give them to her?

21 A It was to create another version of depository copy to be
22 registered with the copyright office.

23 Q I'd like to show you plaintiff's four.

24 MR. MC DANIEL: Actually, at this point I would move
25 into evidence plaintiff's two, plaintiff's three and

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1 plaintiff's four, which we discussed yesterday.

2 MR. KLAPROTH: Which ones?

3 MR. MC DANIEL: Two is the first deposit -- first
4 certificate; three is the first deposit copy -- I'm sorry.

5 Five is the second deposit copy and four is --

6 MR. KLAPROTH: Four --

7 MR. MC DANIEL: Two, three, four and five.

8 MR. KLAPROTH: I have no objection.

9 THE COURT: All right. They'll be received.

10 (P-2, 3, 4 and 5 are marked in evidence.)

11 Q I'd like to show you plaintiff's exhibit four, which has
12 just been received into evidence and ask you if you'll take a
13 look at that, please?

14 Do you know what that document is, sir?

15 A Yes, it's a form you fill out to register something with
16 the copyright office.

17 Q Have you seen that document before today?

18 A Last two years, yes.

19 Q When was the first time that you saw that document?

20 A When it was presented to me by my lawyer's office.

21 Q You were -- you testified a few moments ago that you were
22 aware that there was a registration being prepared?

23 A Yes.

24 Q Did you know whose name the registration was being
25 prepared in?

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1 A I know that Tina was doing the registration, but I never
2 saw any of the registrational paperwork whether being sent to
3 the copyright office or coming from the copyright office.

4 Q What did she tell you about the ownership issues of the
5 registration that she was filing?

6 MR. KLAPROTH: Objection, leading.

7 MR. MC DANIEL: Withdrawn.

8 Q Did Miss Lindsay tell you anything about whose name the
9 registration would be made in?

10 A In those days we didn't talk about ownership of this at
11 all, except when we talked about stopping the Raskin's from
12 taking it from us. Otherwise, there's nothing I can say that
13 we talked about it.

14 The only related thing, possibly related, maybe related
15 is that at one time when the dispute with the Raskin's
16 started, Tina had suggested that I lay low, keep my name out
17 of it, to keep me from being attacked like she was by the
18 Raskin's, but as to ownership specifically of the system, no,
19 I don't remember any discussions we ever had with that in
20 those days.

21 Q Directing your attention to June, 1997, did there come a
22 time that you left LSDI?

23 A Yes.

24 Q What happened?

25 A Well, back in '96, thanks to Loretta, Hard-Hanks, a major

1 list company had sent us an encoding job to do. We
2 successfully did it. LSDI collected money, we were owed quite
3 a bit of money because they had been bouncing payroll checks
4 on us.

5 When me and Tina went to the bank together when the
6 second Hard-Hanks check got in and got our checks cashed, it
7 appeared that the bank had had instructions on whose checks to
8 be cashed and whose wasn't, but we together basically forced
9 their hand.

10 Then we discovered that the Raskin's were negotiating
11 with Hard-Hanks to actually sell the ethnic system outright to
12 Hard-Hanks. It wasn't theirs to sell.

13 Q You resigned?

14 A We resigned.

15 Q Okay.

16 What did you do after you resigned?

17 A Tina had contacted Hard-Hanks, notifying them that it
18 wasn't the property of LSDI. I just resigned.

19 Since I was the only computer guy they had at LSDI,
20 they asked me back on a consulting basis. I went back for a
21 month, but they kept after me with questions on what me and
22 Tina were doing, what this meant, what that meant. Stress was
23 heavy so after a month, I quit on that also.

24 Q Okay.

25 A We resigned basically to prevent that sale and start out

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1 on our own.

2 Q Okay.

3 Let's just backup for a second.

4 We've talked about the TAP system. When was TAP
5 organized?

6 A I don't remember. It's been such a part of my life, I
7 don't remember the exact date we formed it.

8 Q I'm going to show you plaintiff's exhibit six.

9 Take a look at that and see if that refreshes your
10 recollection as to when TAP was organized?

11 A According to this, it was June 18, '96.

12 Q Are you able to identify the document that I've given you
13 that's marked as plaintiff's six?

14 A At this time, it is not recognizable to me, but I must
15 have seen it. My signature is here.

16 Q You're saying "here," what are you referring to?

17 A On this page ten.

18 Q What was the ownership of TAP?

19 A 50/50; half me, half Tina.

20 Q And did you have any positions as officers, directors?

21 A Officially Tina was president, I was treasurer and a few
22 other things, technology, computer. We were a two-man company
23 so each of us did a lot of different things. Formality wasn't
24 very big with us at that time.

25 Q How did you divide responsibilities between yourselves?

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1 A Well, since Tina had corporate experience and could write
2 much better than I could, she took the lead on sales and
3 meetings with people, while I did support work, took care of
4 the computer processing, improvements to the system.

5 Q When did TAP actually begin operating?

6 A Before we left LSDI's employment.

7 Q How did it operate before then?

8 A Clandestinely. We --

9 Q When you left LSDI, in 1997, you mentioned that Tina
10 wrote to Hard-Hanks.

11 Do you recall that testimony?

12 A Yes, I remember her saying she was writing Hard-Hanks,
13 yes.

14 Q What was your level of involvement with that
15 correspondence with Hard-Hanks?

16 A None. All correspondence, telephone calls or anything to
17 Hard-Hanks, Tina took care of.

18 Q Did you receive copies of the correspondence?

19 A I don't remember ever receiving copies.

20 Q There's an issue in this case that you heard referred to
21 in opening remarks of a license that was given from Tina to
22 TAP.

23 Do you have any knowledge about that license?

24 A No, except what I have been told.

25 Q At the time were you ever provided with a copy of a

1 license?

2 A I can't say if I was ever provided with one or not
3 provided with one.

4 Q Have you ever executed any type of document by which you
5 conveyed whatever interest you had in these programs to anyone
6 else?

7 Let me withdraw that. That's not a very good question.

8 Do you still own the copyrights in your opinion? Do
9 you still own the copyrights in your programs?

10 A Yes.

11 Q Have you ever given them to anybody else?

12 A No.

13 Q Have you ever signed a document that gave them to someone
14 else?

15 A No.

16 Q TAP ultimately entered into another business venture with
17 CMR. Is that correct?

18 A Yes.

19 Q Okay.

20 Can you describe for us what the nature of that new
21 business was?

22 A To my description, it was a combination of a software
23 company and a list company that provided several services to
24 clients, enhancing the list with ethnic codes and other codes
25 that they sent us, computer processing capabilities, licensing

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1 derivative copies of the original ethnic system that was
2 developed at the time of joining and the resale of lists.

3 Q What was the form of this new business going to be?

4 A As an LLC, joint partnership between TAP Systems and
5 Consumer Marketing Research, so there would be three
6 principals; myself, Tina Lindsay and the owner of CMR, Gabriel
7 Nelson.

8 Q And what was CMR bringing to the table?

9 A Well, they already had offices, furniture, computer
10 system, old, dating back into the early 1980s, but a computer
11 system, some contacts, membership in the Direct Marketing
12 Association and a name because the former owner, Gabriel's
13 father, Norman Nelson, was a big name in the list industry at
14 one time.

15 Q Did they have any intellectual property?

16 A Yes, they had a list of last names, ethnically identified
17 that was effective and some first names that wasn't very good,
18 but, yes.

19 Q And what was TAP bringing to the table?

20 A TAP was bringing myself and Tina's ideas and creativity,
21 the LCID ethnic system that was a complete ethnic system,
22 reference files, programs, a whole complete ethnic system and,
23 yeah, and our ability to work.

24 Q When did you form -- withdrawn.

25 I show you a document that has been marked as

1 plaintiff's exhibit eight.

2 Can you take a look at this and please tell me if you
3 can identify that document?

4 THE COURT: Let's take five minutes, Mr. McDaniel.

5 Some of the jurors are uncomfortable. Take a short break.

6 THE CLERK: All rise.

7 (Jury is excused and the following takes place out of
8 the presence of the jury.)

9 THE COURT: All right.

10 (Recess.)

11 THE COURT: Okay. Let's see if the jury is ready.

12 THE CLERK: All rise.

13 (Following takes place in the presence of the jury.)

14 THE COURT: Okay, have a seat.

15 DIRECT EXAMINATION CONTINUES BY MR. MCDANIEL:

16 Q Now, Mr. Brownstein, when you left LSDI, how did you get
17 the LCID, the system out of LSDI?

18 A Actually, the leaving was preplanned by me and Tina and I
19 made copies on the mag tapes off of those logons. There's a
20 simple utility part of VM that allows you to copy files off of
21 a disk onto tape. I used that.

22 Q And --

23 A I carried them out.

24 Q You made physical copies and carried them out.

25 What was in the physical copies that you carried out?

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1 A Well, the ethnic system, both the programs and the data
2 and all other programs that I had written previously for LSDI,
3 FPCI and CMR that were totally unrelated to the ethnic system,
4 but I had wanted to keep copies of what I created.

5 Q What did you do with the copies of the ethnic system that
6 you took from LSDI?

7 A At first I stored them at one of these self storage
8 places in a locker I rented, along with some other tapes that
9 TAP had acquired for use, scratch tapes.

10 Q And afterwards, what did you do with them?

11 A First me and Tina arranged for use at a data center,
12 basically service bureau type data center named Dynatron in
13 Newark. They rented us time.

14 I loaded all of this onto their machines so we could
15 run things together, run ethnic encoding, do data entry,
16 everything necessary.

17 Q Did you have any customers at the time?

18 A I recall one customer. Loretta Pogio was actually
19 working with us sort of semi-secretly. She got us a deal with
20 Dunn & Bradstreet, I believe, for selling list of names and
21 businesses, ethnically identified the executives on the
22 business -- in the business records.

23 Q Okay.

24 A But I really have to check a lot of files to know all the
25 business we did or not did.

1 Q Okay.

2 Just before the break, I had given you a copy of a
3 document. I think it is plaintiff's exhibit eight.

4 Do you recognize that document, sir?

5 A Yes.

6 Q What do you recognize it to be?

7 A It's the first joint agreement document that was created
8 when TAP Systems and CMR created Ethnic Technologies as a
9 joint venture.

10 MR. MC DANIEL: I would move plaintiff's exhibit
11 eight into evidence at this time.

12 MR. KLAPROTH: No objection.

13 (P-8 is marked in evidence.)

14 Q After you started Ethnic Technologies, what did you do to
15 further that business?

16 A Well, first thing was acquired tapes of CMR's files and
17 loaded them down at Dynatron and created a program that did
18 several things.

19 One, it converted the codes on those records to the
20 code, similar codes, actually codes with similar meanings to
21 TAP Systems, TAP Systems' coding, coding in LCID, matched
22 names against names between the two files, dropping any
23 duplicates that showed up on the CMR file and three, printed
24 out names that matched, but whose ethnic coded identification
25 was different.

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1 Q And when you went to CMR, you had a copy of the LCID
2 program?

3 A After we left Dynatron, I had a combined system,
4 basically a new derivative system that combined the ethnic
5 system that me and Tina created with the CMR files.

6 Q Did you hold any positions with Ethnic Technologies?

7 A Officially I was CIO, but I was also, through the joint
8 venture, a 25-percent owner.

9 Q What do you mean by CIO,?

10 A Chief information officer.

11 Q What was the nature of your responsibilities at Ethnic
12 Technologies?

13 A At beginning, nothing related to the title. I basically
14 -- CMR had dropped from 370 some people in around '79, '80 to
15 only about three employees when we joined them in '97, late
16 '97, so there was -- so I did a lot of work cleaning up their
17 offices, besides working on the computer system and they had
18 the operating system was different than what we had been used
19 to working on so I had to rewrite JCL for that particular
20 operating system, another version of the JCL to run the ethnic
21 system with.

22 Q During the time that followed, were there any updates or
23 revisions that were made to the ethnic system?

24 A Over the years, quite a few. Very much more efficient
25 inventory program was created, another program was added that

1 only did language, taking the semi-unique names that CMR had
2 and using them for identification of the language people are
3 speaking.

4 That was another program added to the ethnic system,
5 enhancements to the first name program, last name program was
6 expanded quite a bit and middle names were starting to be
7 used, was added to the system and that was added to the last
8 name program. Quite a few changes.

9 Q And what was your role in the development of these
10 changes and revisions?

11 A Besides discussion about what should be changed and so
12 forth, doing the programming. Actually developing some of the
13 changes.

14 Many times I would get verbal instructions on what they
15 wanted something new to be or we decided verbally on something
16 or I'd get one sheet of explaining what they wanted, and I had
17 to translate that into an -- analyze it and translate it into
18 programs or changes to programs.

19 Q And did you have anyone that you worked with to do this
20 development work?

21 A At first, no; later on, we hired people. First there was
22 a person I hired to do system work that I didn't know,
23 operating system maintenance and installation. I could do the
24 basic, but not the advanced stuff on that and later on, he was
25 given other tasks.

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1 One of them was the census data, to work with Tina to
2 massage census data into a new geocoding file.

3 Q When did you stop doing development work on the ethnic
4 system?

5 A When I got tossed out of Ethnic Technologies.

6 Q I'd like you to take a look at plaintiff's exhibit nine,
7 if you would.

8 Can you identify plaintiff's exhibit nine?

9 A Yes, this is the second version of the joint agreement
10 between CMR and TAP Systems, enhanced revision of the old one.

11 MR. MC DANIEL: We move plaintiff's exhibit nine into
12 evidence.

13 MR. Klaproth: No objection.

14 (P-9 is marked in evidence.)

15 Q After Ethnic Technologies was formed, this joint venture,
16 what happened to TAP?

17 A TAP basically became a holding company me and Tina used
18 to filter the money through that was our profits from Ethnic
19 Technologies.

20 Q And how did you divide the profits?

21 A 50/50, at least in TAP.

22 Q And were you employed by Ethnic Technologies?

23 A Yes, we all were, and we all got salaries.

24 Q From Ethnic Technologies?

25 A Yes.

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1 Q And that was separate and apart from what you got through
2 TAP?

3 A Yes.

4 Q Let me show you plaintiff's exhibit 13.

5 Are you able to identify that document?

6 A It's a page off the website.

7 Q Are you mentioned on that page?

8 A Yes. I'm surprised my picture isn't there.

9 Q Mr. Brownstein, is this?

10 MR. KLAPROTH: Your Honor, I object to showing the
11 witness this portion of the document. It's hearsay.

12 THE COURT: Well, we don't even know what it is.

13 It's off the website of what? What is it?

14 MR. MC DANIEL: I will.

15 Could you kill it, actually?

16 Q Mr. Brownstein, what website is this from?

17 A The Ethnic Technologies official website.

18 Q Okay.

19 And does it -- does this -- does this document contain
20 a description, a professional description of you on it?

21 A Yes, it does, as my position at Ethnic Technologies.

22 MR. KLAPROTH: Objection, hearsay.

23 THE COURT: Hold it.

24 Mr. Brownstein, do you know when this document was
25 created?

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1 THE WITNESS: This would have been after 2005,
2 because Zach Wilhoit's on it.

3 THE COURT: And at the time this was created, did you
4 have a position in Ethnic Technologies?

5 THE WITNESS: Yes.

6 THE COURT: And what was the purpose for which this
7 was created?

8 THE WITNESS: The document?

9 THE COURT: Yes.

10 THE WITNESS: It was to show the executive staff as
11 part of our website, Ethnic Technologies' website. It was
12 basically who ran Ethnic Technologies.

13 THE COURT: Was it a document created for purposes of
14 marketing?

15 THE WITNESS: Yes, it was.

16 THE COURT: For giving information to the world about
17 Ethnic Technologies?

18 THE WITNESS: Yes.

19 THE COURT: Was it created in the ordinary course of
20 a business of Ethnic Technologies?

21 THE WITNESS: Yes.

22 THE COURT: Overruled.

23 Go ahead.

24 Q Now, Mr. Brownstein, do you know the date until or the
25 approximate date until this document was published on the web?

1 A Still there in 2010, but it was -- I was removed sometime
2 during our disputes, but I don't remember when exactly. This
3 document is in a new form is still up there on the website.

4 Q Okay.

5 Can we take a look at your description, if you would,
6 please? Directing your attention to the last sentence of the
7 professional description?

8 A Software component designer of both LCID and E-Tech
9 targeting systems.

10 MR. MC DANIEL: We move this document into evidence.

11 MR. Klaproth: No objection.

12 THE COURT: All right.

13 Do you have a hard copy of it?

14 MR. MC DANIEL: I do.

15 THE COURT: May I see it?

16 It's in evidence.

17 (P-13 is marked in evidence.)

18 Q Now, did you participate in the preparation of this
19 professional description?

20 A Yes, I did.

21 Q Okay.

22 And did the other principals of Ethnic Technologies
23 participate in the preparation of this description?

24 A My particular description, I think only Candace Kennedy
25 participated in providing it to the people we had creating the

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1 website for us. Otherwise, I believe each executive wrote his
2 own.

3 Q Did the principals review the content of this web page?

4 A I did. I don't know about others.

5 Q Did you ever receive any objections about the way you had
6 been described on this web page?

7 A None.

8 Q Before this lawsuit was filed, what discussions, if any,
9 did you have directly with Tina Lindsay about the
10 co-authorship or lack of co-authorship of this system?

11 THE COURT: Do you mean ever or are you focusing to
12 the period just before the lawsuit was filed?

13 MR. MC DANIEL: Prior to 2000 --

14 THE COURT: Ever?

15 Q Ever.

16 A Actually, none. The subject of who owned the system
17 between me and Tina never came up between us.

18 We often talked about how we would present it to the
19 world, especially during the trouble with the Raskin's, how we
20 would -- what we would say and what we wouldn't, but between
21 ourselves, nothing.

22 Remember, trust, at least on my end, was total. I
23 didn't think anything of it, about anything of it.

24 Q How did you come to think that there might be a problem?

25 MR. KLAPROTH: Objection, leading.

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1 THE COURT: Well, why don't you rephrase the
2 question?

3 MR. MC DANIEL: Okay.

4 THE COURT: Problem with what?

5 MR. MC DANIEL: Okay, I will.

6 Q Can you describe how you became aware that there was a
7 potential dispute as to whether you were co-author of the
8 ethnic system?

9 A It was when we were preparing for the suit over violation
10 of the operating agreement that I lodged against my partners
11 at Ethnic Technologies, was the first time that that question
12 came up.

13 Q How did it come up?

14 A My lawyer informed me of it.

15 THE COURT: Can we have a time period? When are we
16 talking about?

17 Q When was this?

18 A Let's see, that would be late winter, January. What was
19 it? 2000 -- we settled in two years ago, I would say 2000 --
20 around January, February, 2009 approximately, I think,
21 depending on when we actually went to first lodge that
22 complaint.

23 Q Are you having difficulty remembering the date?

24 A The year, yes.

25 Q Let me show you a document.

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1 This is plaintiff's 10. If you can look at it, you
2 don't have to disclose the contents, but let me know if that
3 refreshes your recollection as to the time frame that we're
4 discussing?

5 A Well, yes, it would be 2010, around the beginning of it.
6 February or so, March.

7 Q And what did you know at that time?

8 THE COURT: About what?

9 Q That there might be --

10 MR. MC DANIEL: I'm struggling with the question,
11 Judge. Let me just have a moment to think.

12 Q What did you think was the nature of the dispute when you
13 first became aware of it in 2010?

14 A I'm really not sure. The dispute I was having, was over
15 conduct of my partners, specifically the renewal of Wilhoit's
16 contract.

17 Q I don't think that we -- that's not what I'm driving at.

18 A Okay.

19 Q Let me try it this way: Directing your attention to the
20 period of February of 2010, do you recall Miss Lindsay being
21 deposed?

22 A Yes.

23 Q Okay.

24 A Vaguely.

25 Q And did her testimony indicate to you that there was a

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1 dispute about the authorship, co-authorship of the copyrights
2 at issue in this case?

3 MR. KLAPROTH: Objection, your Honor. Was he present
4 at the deposition?

5 THE COURT: Who?

6 MR. KLAPROTH: The plaintiff.

7 THE COURT: Let's find out.

8 Were you present at Miss Lindsay's deposition?

9 THE WITNESS: No, your Honor.

10 THE COURT: Let me ask you a question. You said that
11 there was a lawsuit against your partners.

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Whom do you consider to have been your
14 partners?

15 THE WITNESS: Tina Lindsay and Gabriel Nelson.

16 THE COURT: So there was a lawsuit that you filed
17 against Lindsay and Nelson arising out of some business
18 disputes that were going on at Ethnic Technologies. Is that a
19 fair statement?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: And during the course of that litigation,
22 you became aware of a deposition given by Miss Lindsay.

23 Is that what you're talking about in this particular
24 line of questioning?

25 THE WITNESS: Yes, there was a deposition. In fact,

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1 it was videotaped.

2 THE COURT: How did you become aware of the
3 deposition and the substance of her testimony?

4 THE WITNESS: Substance, through watching the
5 videotape parts of it and through my lawyer.

6 THE COURT: Okay.

7 MR. MC DANIEL: Thank you.

8 THE COURT: By the way, in case you folks aren't
9 familiar with the term "deposition," whenever a lawsuit is
10 filed, the parties to the lawsuit, whoever they might be, are
11 entitled to ask each other questions on the record. That's
12 known as a deposition.

13 You can ask the other party questions in a
14 deposition, you can ask the witness questions in a deposition.
15 It's all part of a phase of litigating that we call discovery.
16 You may have heard that phrase.

17 Apparently there was a lawsuit between Mr. Brownstein
18 and Miss Lindsay, Miss Nelson and Ethnic Technologies arising
19 out of some business dispute. During the course of the
20 discovery phase in that litigation, Miss Lindsay gave a
21 deposition and that's what Mr. Brownstein is talking about.

22 Go ahead.

23 MR. MC DANIEL: Thank you, your Honor.

24 Q At this point in time, and I'm referring to the time that
25 you reviewed the deposition transcript or familiarized

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1 yourself with the contents of her deposition testimony, what,
2 if anything, did you know about the second registration that
3 Miss Lindsay had made?

4 A There was a claim made that the programs were put into
5 the deposit copy as mere examples of how the copyright could
6 be used, not as part of the copyright itself.

7 Q Okay.

8 How did you come -- get that knowledge?

9 A I said through the deposition.

10 Q Oh, I understand.

11 What action did you take next with regard to the
12 copyrights?

13 A Well, I did discover I had some copies of the programs in
14 my possession. I didn't realize I had them. I registered
15 them and, of course, we had this suit started.

16 Q Let me show you plaintiff's exhibit ten and ask you if
17 you recognize that document. Just tell me if you recognize
18 it. You don't have to tell us what it is.

19 A I most likely definitely saw it, but I don't remember
20 recognizing it.

21 Q Okay.

22 Do you know, Mr. Brownstein, if any kind of demand was
23 made on Miss Lindsay as a result of her deposition testimony
24 as relates to the copyrights?

25 A To correct the copyright, to co-authorship.

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1 Q Do you know how that demand was made?

2 A Through my lawyer.

3 Q I'm going to show you plaintiff's exhibit 11 and ask you
4 if you recognize that document?

5 A Yes.

6 Q What do you recognize that document to be, Mr.

7 Brownstein?

8 A What?

9 Q What do you recognize that document to be, Peter?

10 A It appears to be a reply to our demand or my demand for
11 co-authorship and it -- a dispute as to refusal.

12 MR. MC DANIEL: We would move plaintiff's 11 into
13 evidence.

14 MR. KLAPROTH: No objection.

15 (P-11 is marked in evidence.)

16 A I can't read it on the screen. It's too small.

17 Q Mr. Brownstein, one of the questions that's posed in this
18 letter is why you were making this allegation after 14 years.

19 Do you see that?

20 A Yes, I see that.

21 Q Why did you wait 14 years?

22 A I never thought it was anything but me, mine and Tina's
23 property before this. I always thought about it as ours.

24 Of course, I always boosted Tina up in the public's eye
25 as her idea, it was her idea in the system, it was good

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1 publicity, but I never thought about it as anything but ours.

2 To my view, there was nothing that doubted that.

3 We had signed -- we had developed a lot of derivative
4 copies together, newer versions based on the old thing,
5 derivatives, we had gone into business together, we had joint
6 ventured with Gabriel Nelson and CMR. We did everything
7 together. We ate lunch together. We confided in each other,
8 personally matters. She was, as I said before, the executor
9 of my living will. I trusted her with my life so until this
10 information that specifically came to light, I never thought
11 of it, never had a reason to think of it.

12 I still can't understand it.

13 MR. KLAPROTH: Objection, there is no question
14 pending.

15 THE COURT: You've got to listen to the questions and
16 just answer them, Mr. Brownstein.

17 MR. MC DANIEL: Actually --

18 THE COURT: You tend to be lapsing into some
19 narratives, but go ahead.

20 MR. MC DANIEL: Actually, we're finished. I pass the
21 witness.

22 THE COURT: You're finished, no further questions.

23 All right.

24 Let's take a short break and we'll come back and
25 cross-examine.

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1 THE CLERK: All rise.

2 (Jury is excused and the following takes place out of
3 the presence of the jury.)

4 (Recess)

5 THE CLERK: All rise.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: Mr. Klaproth, you may cross-examine.

9 MR. KLAPROTH: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. KLAPROTH:

11 Q Good morning, Mr. Brownstein.

12 A Good morning.

13 Q You testified that you wrote the programs at issue in
14 1994, 1995, correct?

15 A Yes.

16 Q Okay.

17 MR. KLAPROTH: May I approach the witness?

18 THE COURT: Sure.

19 Q I'd like to show you what's been marked as plaintiff's
20 exhibit two.

21 A Yes.

22 Q Actually, it's three.

23 Now, you identified that as the deposit copy of the
24 first copyright registration in February, 1996, correct?

25 A Yes.

1 Q Okay.

2 Could you point out where in that document your
3 programs are?

4 A They're not in the first deposit copy.

5 Q Thank you.

6 A Me and Tina had a discussion and she said it wasn't a
7 good time to include them in this copy, so they're not
8 included.

9 Q Now, we've had some testimony about LCID?

10 A Yes.

11 Q And now, that's the product that's at issue here,
12 correct?

13 A Yes.

14 Q And LCID is what you claim to be a co-author of, correct?

15 A Yes.

16 Q LCID is an acronym?

17 A Actually, me and Tina got it from a movie and created
18 into an acronym because there was this movie with Charles --
19 THE COURT: Stop, stop. Just answer the question.
20 Is it an acronym?

21 Q The letters stand for something?

22 A Originally, it was just a name, but we turned it into an
23 acronym.

24 Q Why don't we show the jury the acronym? It's LCID.

25 Do you see that?

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1 A Yes.

2 Q What does the L stand for?

3 A Lindsay.

4 Q Lindsay.

5 What does the C stand for?

6 A Cultural.

7 Q The I?

8 A Identification.

9 Q And the D?

10 A Determinant.

11 Q There is no P or B in that acronym, is there?

12 A No, the original word didn't have it.

13 Q Now, you've testified that your programs and Tina's
14 system were irrevocably entwined. Is that correct?

15 A That's, yes, one doesn't work without the other.

16 Q So to be clear, her system cannot be used without your
17 program, correct?

18 A Or any program, but at the time, my programs.

19 Q So her system needs your program, right?

20 A Today, it needs programs, it needs to be translated, but
21 yeah, at the time, for development it needed my programs.

22 Q So these two things, the programs and her system cannot
23 be separated.

24 Is that your testimony?

25 A She doesn't have a system without programs.

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1 Q So her system needs your programs?

2 A Yes, my programs.

3 Q Now, you're claiming that you should have been a
4 co-author because this is one system, the programs and the
5 system, correct?

6 A Yeah, you can't have a system with just information.

7 Q Now, the programs at issue, there's derivative works of
8 those programs as well, right?

9 A Quite a few.

10 Q And you did those while at TAP, correct?

11 A I and other people did derivatives, yeah. No, not --
12 just one at TAP, the rest was at Ethnic Technologies.

13 Q There's some at TAP, some at Ethnic Technologies,
14 derivative works of the original program, correct?

15 A Yes.

16 Q And those derivative works are also irrevocably entwined
17 with Tina's system.

18 Is that your testimony?

19 MR. MC DANIEL: Objection.

20 THE COURT: What's the objection?

21 MR. MC DANIEL: Withdrawn.

22 A It wouldn't be a system without the program, yes.

23 Q So you're claiming that Tina Lindsay should have included
24 you on the copyright registration as a co-author because these
25 are irrevocably entwined, correct?

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1 A Yes, and it couldn't have been as developed without the
2 programs.

3 Q Now, you have your own copyright registrations, don't
4 you?

5 A Yes.

6 Q And they were registered in December, 2009?

7 A Yes.

8 Q And those registrations contained the programs that were
9 the derivative works of the original programs?

10 A I think they're derivative works, yes.

11 Q So those programs are irrevocably entwined with her
12 system then, correct?

13 A To work properly, yes, but I could also research my own
14 name lists and run them.

15 Q So then the system can be separated?

16 A As a system, no. You have to have reference files and
17 you have to have programs working together to create the
18 system, no matter what -- who creates the programs or who
19 creates the reference files, you have to have both for the
20 system to work.

21 Q Now, your first copyright registration dated December
22 23rd, 2009, you didn't include Tina Lindsay as a co-author,
23 did you?

24 A She had nothing to do with the writing of those programs.

25 Q Thank you.

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1 The second copyright registration, December 23rd, 2009,
2 same date, you did not include Tina Lindsay as a co-author,
3 did you?

4 A I was not filing anything that Tina created that I know
5 about unless I'm confusing copyrights.

6 Q Mr. Brownstein, I'm going to show you --

7 MR. Klaproth: Your Honor, do you have trial
8 exhibits?

9 THE COURT: Thank you.

10 Q Mr. Brownstein, I'm going to show you what's been marked
11 as defendants' exhibit one.

12 Could you identify that document for me?

13 A Yes.

14 Q What is it?

15 A It was an affidavit I gave in our, me and Tina's, fight
16 against the Raskin's.

17 Q If you turn to the last page of that document, is that
18 your signature at the bottom?

19 A Appears to be, yes.

20 Q And the date is August 8, 1997?

21 A Yes.

22 Q And in this affidavit, you certified that the statements
23 you were giving were true. Is that correct?

24 A Yes.

25 MR. Klaproth: Your Honor, I'd like to offer

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1 plaintiff's -- defendants' exhibit one into evidence.

2 MR. MC DANIEL: No objection.

3 THE COURT: All right.

4 (D-1 is marked in evidence.)

5 Q Now, Mr. Brownstein, could you turn to paragraph nine of
6 your affidavit?

7 Are you there?

8 A Yes, I am.

9 Q Okay.

10 It reads, "It was December of 1993, when Tina first
11 shared her ideas with me about some work she had been doing at
12 home. She showed me how she saw the system working in terms
13 of using first names, last names, other rules she would apply
14 after looking at the first and last names. She told me she
15 had a lot of names already classified at home and looking at
16 the name led her to an artificial intelligence rule-based
17 system approach. This way the intelligence resides in the
18 data rather than the old-fashion approach of putting the rules
19 in a computer program."

20 Did I read that correctly?

21 A Yes. She did do some work at home and brought it in to
22 show it to me, explained it to me.

23 THE COURT: Stop.

24 The question is, did he read it right? The answer is
25 yes.

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1 Q Could you turn to paragraph 18 of that document?

2 I'm sorry, let's go to --

3 A Yes.

4 Q Go to 24.

5 Now, it reads, "Tina told me in December, 1995, that
6 she was sending work for copyright registration."

7 Did I read that correctly?

8 A Yes.

9 THE COURT: Actually, you didn't.

10 MR. KLAPROTH: One more time.

11 Q "Tina told me in December, 1995, that she was sending her
12 work for copyright registration."

13 Did I read that correctly?

14 A Yes.

15 Q Turn to paragraph 21 please.

16 Paragraph 21 reads, "One day Tom began to talk to me
17 about "Loretta's ethnic." I said, "Loretta's ethnic system?
18 I thought it was Tina's ethnic system." Later on, he started
19 to refer to the system as the system that Loretta and Tina
20 developed. When this happened, I would point out that Tina
21 did all the research. This was about November, 1995."

22 Did I read that correctly?

23 A Yes.

24 Q Now, turn to paragraph 31.

25 Are you there?

1 A Yes.

2 Q It reads, "One day in the fall of 1996, I was outside of
3 the computer room talking to Tina when Tom approached and
4 asked her, "Whatever happened to that copyright?" Tina told
5 him she had received it a few months ago and that she had it
6 at home. Tom got very upset and said that bad things were
7 going to happen if she didn't turn it over to him right away.
8 Tina told him the copyright was in her name because she
9 initiated it and did all the work and spent her own money and
10 time to do it. Tom got loud and began yelling. The argument
11 continued back and forth between Tom's office and Micah's desk
12 in the back for a couple of hours. Later Tom told me Loretta
13 did a lot of the work and that made LSDI a co-owner. I told
14 him once again that he was wrong."

15 You were present for that conversation?

16 A At least parts of it or the yelling, yes.

17 Q That was in the fall of 1996, that you heard Tina tell
18 Tom Raskin that the copyright was in her name?

19 A Yes.

20 Q Now, one of the reasons you gave for referring to it as
21 her system is that you wanted to keep your involvement secret.
22 Is that correct?

23 A No, Tina asked me to do that because she felt it would
24 help me avoid problems with the Raskin's, like she was having
25 so I agreed to do that.

Brownstein - Cross

203

1 Q So you agreed to do that so the Raskin's would not know
2 that you were involved in any way with the system, correct?

3 A Correct.

4 Q Now, that document, defendants' exhibit one, is dated
5 August 8, 1997?

6 A Right.

7 Q And that document is an affidavit that was submitted in a
8 lawsuit that List Service Direct brought against Tina Lindsay
9 and TAP Systems, Inc. Is that correct?

10 A Yes.

11 Q And you made that affidavit in defense of the lawsuit
12 brought by List Service Direct. Is that correct?

13 A Yes.

14 Q So at the time you made this affidavit, there was no
15 longer a reason to keep your involvement secret, was there?

16 A Actually, I just -- I thought there was still a reason.
17 This was the way we had planned it out. In fact, one or two
18 omissions that I remember in this document specifically, Tina
19 and I, to avoid certain things in the lawsuit.

20 Q So where you refer to her work and her system in this
21 affidavit, that's not true?

22 A Partially true. It actually technically, since she had
23 her name on the copyright, true, but, no, in reality no, no,
24 no.

25 Q Now, let's talk a little bit about the programs.

Brownstein - Cross

204

1 These programs were simple to code, were they not?

2 MR. MC DANIEL: Objection.

3 THE COURT: Overruled.

4 MR. MC DANIEL: May I be heard at sidebar?

5 THE COURT: What's the objection?

6 MR. MC DANIEL: The objection is that --

7 THE COURT: It's cross-examination.

8 MR. MC DANIEL: The objection is that simplicity is
9 not an element in the copyright statute.

10 THE COURT: Overruled. You can make argument on
11 that.

12 Go ahead.

13 Q These programs were simple to code, were they not?

14 A No. The first name was relatively simple, but the rest
15 of it wasn't.

16 Q Could you turn to paragraph 14 of the document,
17 defendants' exhibit one?

18 A Paragraph 14.

19 Q "The programs were simple to code," weren't they?

20 A That's what it said.

21 Q Now, you also followed Tina's specifications on how the
22 computer system had to be written exactly, didn't you?

23 A Just the order in which the names had to be applied.

24 There weren't really any other specifications, except for that
25 one on trying to do it all in one program.

Brownstein - Cross

205

1 Q You followed her specifications exactly?

2 A When it came to the order in which to match the different
3 files, yes, but that was the only specification.

4 Q Now, you knew she was submitting her work to the
5 copyright office at the time she first submitted it, correct?

6 A Yes, in response to Raskin's, yes.

7 Q You never had a conversation with Tina about whether or
8 not you would be included as a co-author prior to that time
9 point?

10 A No.

11 Q And that's February, 1996, when she registers the first
12 copyright?

13 A That would be December and November of '95, when we
14 prepared it.

15 Q The registration, the first registration was February,
16 1996, correct?

17 A Yes, but we prepared it in November and December. I
18 didn't -- after that, I didn't see it.

19 Q Now, between February, 1996 and December, 1996, did you
20 have any conversations with Tina Lindsay about whether you
21 would be included as a co-author in the copyright?

22 A No.

23 Q Now, the second registration is in December, 1996?

24 A If that's what the date is on the registration, yes. I
25 don't remember exactly.

Brownstein - Cross

206

1 Q Now, after the second registration, did you have any
2 conversations with Tina Lindsay about whether you would be
3 included as a co-author in the copyright?

4 A No.

5 Q You never asked her?

6 A No. Why should I have?

7 Q She never told you?

8 A No.

9 Q Now, TAP is formed in 1996?

10 A Yes.

11 Q And you're 50-percent owner or you were 50-percent owner
12 of TAP?

13 A Yes.

14 Q You made decisions as an owner?

15 A What there were of them, yes.

16 Q You took care of the bookkeeping?

17 A Yes, but there wasn't really any bookkeeping to take care
18 of.

19 Q You were the vice-president?

20 A Yes.

21 Q You were the treasurer?

22 A Yes, but this at that time, TAP was just something on
23 paper.

24 Q Now, LCID became known as the TAP system after TAP was
25 formed. Is that true?

Brownstein - Cross

207

1 A Yes, on advice of lawyer we changed all the names of the
2 programs.

3 Q Now, TAP Systems, Inc., the company, used the TAP system.
4 Is that true?

5 A Yes.

6 Q And the TAP system consisted of the copyrights and the
7 programs that you claim to have authored?

8 A It consisted of the reference files and the programs,
9 yes.

10 Q And TAP used the TAP system because TAP owned the TAP
11 system, didn't it?

12 A TAP, no. TAP system used it because we owned it.

13 Q You and Tina owned it?

14 A Yes.

15 Q Did you sign any documents that allowed TAP Systems, Inc.
16 to use the TAP system?

17 A I never signed a document like that. It was just
18 something we owned. We started a business to do what we make
19 money on, something we developed.

20 Q Now, LSDI, your former employer, brought a lawsuit in
21 1997 against Tina Lindsay, correct?

22 A Yes.

23 Q Now, LSDI is also called FPCI?

24 A No, that was a different company.

25 Q But FPCI reorganized and named itself LSDI?

Brownstein - Cross

208

1 A Yes, they wanted to get rid of a partner so they
2 reorganized.

3 Q Now, that lawsuit was about ownership of the copyrights
4 at issue here, was it not?

5 A Yes, and our trouble we caused them.

6 Q LSDI wanted everything from that lawsuit, they wanted the
7 copyrights and the programs, didn't they?

8 A Yes.

9 Q Now, at the time of the LSDI lawsuit, you believed you
10 were a co-author on the copyrights. Is that true?

11 A Yes, of course.

12 Q Now, that lawsuit with LSDI settled, right?

13 A Yeah.

14 Q That's a yes?

15 A We settled.

16 Q And at some point you were brought into the lawsuit
17 personally, true?

18 A Yes.

19 Q And you and Tina had, in fact, had the same attorney,
20 didn't you?

21 A Yes.

22 Q And you were defending the copyright registrations,
23 weren't you?

24 A We were defending a lot of things, but yes, that was one
25 of the things. Yes, yes.

Brownstein - Cross

209

1 MR. Klaproth: May I approach?

2 Q I'm going to show you what's been marked as D-7.

3 Could you identify that for me?

4 A It's a settlement agreement of the lawsuit, LSDI.

5 Q Could you turn to the second to last page of that
6 settlement agreement?

7 A Yes.

8 Q Did you sign the bottom of that page?

9 A Yeah, reluctantly. Yes, I did sign it.

10 Q And what's the date next to your name?

11 A It's August 18, 1998.

12 Q Are you sure it's not September 18, 1998?

13 A Nine, yeah, that's September.

14 Q Okay.

15 Now, if you could, could you turn to paragraph three of
16 that document?

17 MR. Klaproth: First, your Honor, I offer D-7 into
18 evidence.

19 MR. MC DANIEL: My prior objection was noted.

20 THE COURT: All right.

21 (D-7 is marked in evidence.)

22 THE COURT: It's received.

23 A Paragraph seven?

24 Q Paragraph three.

25 A Oh, three. Oh, yes.

Brownstein - Cross

210

1 Q It reads, "The parties acknowledge and agree that Tina
2 Lindsay obtained a Certificate of Registration from the United
3 States Copyright Office effective February 12, 1996, for EDS,
4 which may be called LCID, bearing United States Copyright
5 Office Registration Number Txu 730872."

6 Did I read that correctly?

7 A Yes.

8 Q Could you take a look at paragraph four of that document?

9 A Yes.

10 Q Paragraph four reads, "The parties acknowledge and agree
11 that Tina Lindsay obtained a second Certificate of
12 Registration from the United States Copyright Office effective
13 December 10, 1996, for derivative work entitled "An Ethnic
14 Determinant System, Knowledge and Rule Exception Basis,"
15 herein after also called EDS, bearing United States Copyright
16 Office Registration Number Txu, 778127."

17 Did I read that correctly?

18 A Yes.

19 Q After you signed this document in September, 1998, did
20 you ask Tina Lindsay whether you were included as a co-author
21 on either of the copyright registrations?

22 A No.

23 Q Did Tina Lindsay tell you, after you signed this
24 document, that you were a co-author on any of the copyright
25 registrations?

1 A No.

2 Q Did you do anything to investigate whether you were a
3 co-author on any of the copyright registrations?

4 A Didn't see any reason to, no.

5 Q Now, TAP and CMR merge in 1997, correct?

6 A Not exactly merge. We kept our corporate separate
7 identities, but we created a third company, a joint venture.

8 Q So the two companies combined assets and resources. Is
9 that true?

10 A Yes.

11 Q Now, in 2000, there is a second agreement -- I'm sorry,
12 1997, there was an agreement reflecting this combination
13 between CMR and TAP.

14 Yes?

15 A Oh, yes.

16 Q Okay.

17 A I didn't know you had finished a question.

18 Q That's my fault, I'm sorry.

19 The new company was called Ethnic Technologies, LLC?

20 A Yes.

21 Q And that company sold what is now called the E-Tech
22 system?

23 A Yes.

24 Q And E-Tech system --

25 A Plus other things.

Brownstein - Cross

212

1 Q The E-Tech system was formerly known as the TAP system,
2 correct?

3 A No. The E-Tech system was combined with the reference
4 files from CMR, so actually it was about three quarters or so
5 the TAP system, but not the TAP system per se. It had changes
6 in it.

7 Q The E-Tech system is comprised of the copyrights and
8 programs and derivative programs, correct?

9 A Not really.

10 It's made up of a whole set of reference files that
11 were both Tina's and Gabriel Nelson's files from CMR and
12 programs of my writing that were modifications of the TAP
13 Systems' programs to accommodate the new system.

14 Q So E-Tech system contained your programs, among other
15 things, true?

16 A Yes.

17 Q It also contained the copyright registrations, correct?

18 A I don't understand what you mean by "copyright
19 registrations."

20 The registrations is just a piece of paper from the
21 registrar's office, isn't it?

22 Q The work that was registered in the registrations in
23 1996, E-Tech system is comprised of that?

24 A Most of it.

25 Q Now, in 2000, there was a second agreement between CMR

Brownstein - Cross

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1 and TAP?

2 A Yes.

3 Q Okay.

4 I'm going to show you what's been marked as defendants'
5 exhibit eight.

6 Could you identify that for me? Could you tell me what
7 it is?

8 A It appears to be second version of the foundation
9 document for Ethnic Technologies.

10 Q And who is it between?

11 A CMR, Consumer Market Research, and TAP Systems.

12 Q Can you turn to Section 1B of that document?

13 A Yes.

14 Q Do you see some handwritten notations there?

15 A Yes, it was a change made at the time.

16 Q And you initialed that change?

17 A Yes.

18 Q Could you turn to Section 8 of that document?

19 A Eight?

20 Oh, yes, I found it.

21 Q Do you see some handwritten notations?

22 A Yes.

23 Q Did you initial?

24 A Yes, a change was made in the document.

25 MR. KLAPOOTH: Your Honor, I'd like to offer --

Brownstein - Cross

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1 actually I think --

2 MR. MC DANIEL: It's in evidence.

3 MR. KLAPROTH: What number is it in?

4 MR. MC DANIEL: P-9.

5 Q So D-8 is P-9 and P-9 is already in evidence, okay.

6 Could you look at page one of that document? The
7 fourth "whereas" clause. See it?

8 A Yes.

9 Q It reads, "Whereas TAP's know-how and information coding
10 is incorporated into a system, herein after the TAP system, in
11 which the selection parameters and the corresponding ethnic
12 and religious identifications are embodied can be supplied on
13 magnetic tape and to which TAP owns all rights, including
14 copyrights."

15 Did I read that correctly?

16 A Yes.

17 Q After you saw this document, did you ask Tina Lindsay
18 whether you were a co-author on any of the copyrights
19 registered in 1996?

20 A No, I didn't even think that there was anything related
21 to that and this.

22 Q Did you do any investigation after you read this
23 document, as to whether or not you were a co-author on any of
24 the copyrights registered in 1996?

25 A No, this document was there to settle disputes between us

Brownstein - Cross

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1 and Gabriel Nelson. I didn't think of anything like that. It
2 wasn't the focus, no, never came to mind.

3 Q Now, at the time that you read and initialed this
4 document, did you believe yourself to be a co-author in the
5 copyrights registered in 1996?

6 A I believe I was co-creator and thus author, yes, I did
7 the work.

8 Q Now, in this agreement, TAP gave to the new company,
9 Ethnic Technologies, everything TAP owns, including
10 copyrights, didn't it?

11 MR. MC DANIEL: Objection. Mischaracterization.

12 THE COURT: Isn't that what it says?

13 MR. KLAPROTH: TAP owns all rights, including
14 copyrights.

15 THE COURT: Overruled.

16 A Yeah, but TAP didn't own any copyrights that I knew
17 about. We owned -- TAP didn't own anything.

18 One of the things in this document was to make it
19 mirror TAP versus CMR. CMR owned copyrights.

20 Q So that "whereas" clause in this document is wrong?

21 A It was there to bring peace.

22 Q Did you point out, after this document was signed, that
23 that was wrong to anyone?

24 A No, not with -- no. I would be foolish because of the
25 situation.

Brownstein - Cross

216

1 Q Now, as a result of the 2000 agreement, Ethnic
2 Technologies was permitted to use the programs that you
3 created while working for FPCI. Is that true?

4 A Actually, they were already using programs that I had
5 changed at this point. There had been changes to the system
6 before this document, so we're talking at this point
7 effectively derivatives.

8 Q So E-Tech had been using your programs prior to 2000,
9 they had been using those programs?

10 A Yeah, things that I made after '97 and before 2000, yes.

11 Q And you were aware they were using your programs?

12 A I was part of all of this. I built those programs. I
13 was the only one there building programs.

14 Q So you built these programs for Ethnic Technologies' use?

15 A Yes.

16 Q Now, can you tell me, as you sit here today, whether or
17 not any of the alleged ownership interests you have in those
18 copyright registrations survived this 2000 agreement?

19 A Well, I'm not a lawyer so this is uninformed opinion, but
20 in my opinion, everything survived because this was dealing
21 with settling the problems between two companies and having a
22 joint venture between two companies.

23 Yeah, I'm confident in my uneducated opinion that, yes,
24 they survived, definitely.

25 Q So after this 2000 agreement, you still considered

1 yourself a co-author in the copyrights registered in 1996?

2 A Yes.

3 Q Now, were you able to license those copyrights to other
4 companies after this 2000 agreement?

5 MR. MC DANIEL: Objection. I'm not sure which
6 copyrights he's referring to.

7 MR. KLAPROTH: The ones registered in 1996.

8 A We didn't license those to any other companies. What we
9 licensed were the derivative versions created at Ethnic
10 Technologies.

11 Q So Ethnic Technologies was the only company using the
12 E-Tech system after 2000. Is that true?

13 A No. They were using derivative versions, versions that
14 had been derived from that, but not the original programs or
15 the original files. By then major changes had been made to
16 both.

17 Q So your testimony is, is that E-Tech, after 2000, did not
18 use any of the original programs you claim to be co-author of?

19 A They used improved programs, because I did the improving
20 and the changes, the additions.

21 Q Now --

22 A And also Tina did additional research, expanded on the
23 files. Everything about the system was changed.

24 Q Now, you worked for E-Tech and that's Ethnic
25 Technologies, correct?

Brownstein - Cross

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1 A Yes. All of us did, all the owners drew salaries out of
2 Ethnic Technologies as executives of Ethnic Technologies.

3 Q You are no longer with Ethnic Technologies, true?

4 A Yes.

5 Q You filed a lawsuit against Tina Lindsay and Ethnic
6 Technologies in 2009. Is that true?

7 A And Gabriel Nelson, yes. We had a dispute.

8 Q And in that lawsuit you were seeking sole ownership over
9 Ethnic Technologies?

10 A No, I was seeking that they obey what was in these
11 foundation agreements. It was they who introduced in their
12 countersuit the idea of ownership elimination.

13 Q Now, as a result of that lawsuit, a settlement was
14 reached?

15 A Yes, basically forced by the judge, but yes.

16 Q So you didn't willingly enter into that settlement
17 agreement?

18 A I don't think anybody was, but it was costing so much,
19 short on money.

20 Q Now, as a result, your ownership interest in TAP was
21 purchased?

22 A Yes.

23 Q You were bought out?

24 A Yes.

25 Q Now, as part of that settlement agreement, you were given

Brownstein - Cross

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1 the opportunity to return to Ethnic Technologies to pick up
2 your personal items. Is that true?

3 A After awhile, yes.

4 Q And you did return to pick up your items?

5 A What I could find, yes.

6 Q And you took floppy disks with you?

7 A No, I had found that my office there was partially
8 trashed, a lot of papers on the floor, the book cases all
9 rearranged, drawers in my desk empty, stuff missing.

10 Q Did you take floppy disks?

11 A No, they were not present.

12 Q Did you take other personal items?

13 A Yes.

14 Q You were given an opportunity to do that?

15 A After the agreement, yes.

16 Q Now, the programs at issue here, these were all created
17 while you were working at LSDI?

18 A What programs are you talking about?

19 Q The programs you identified as being included in the
20 second copyright registration.

21 A No, I would say FPCI, and improved during work at LSDI.

22 Q So your former employer?

23 A Yes.

24 Q And they were done on their computers?

25 A Yes.

Brownstein - Cross

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1 MR. KLAPROTH: May I approach?

2 MR. MC DANIEL: I'm sorry?

3 MR. KLAPROTH: It's D-9.

4 MR. MC DANIEL: I have an objection to this one.

5 THE COURT: You have an objection?

6 MR. MC DANIEL: I'm asking if I should continue.

7 THE COURT: How much longer do you have?

8 MR. KLAPROTH: Twenty minutes.

9 THE COURT: I'll tell you what, why don't we break
10 for lunch now and I can hear you on this and then we'll come
11 back and resume.

12 Okay with you folks?

13 Did you bring something to eat? Let's take -- call
14 it 40 minutes. If you want to stretch your legs and take a
15 walk, you can do that, but please be back in the jury room not
16 later than 12:40.

17 (Jury is excused and the following takes place out of
18 the presence of the jury.)

19 THE COURT: What's the objection to this?

20 MR. MC DANIEL: I believe that the document is now
21 going to be offered with specifically with reference to
22 copyrights that exist in these programs. These are not the
23 LCID, they're not the programs that are at issue in this case.

24 THE COURT: First of all, what is this? This is an
25 agreement between Ethnic Technologies and Edith Roman &

1 Associates.

2 MR. MC DANIEL: They're licenses, site licenses.

3 THE COURT: So wherein Ethnic Technologies is giving
4 a license to someone.

5 MR. MC DANIEL: Right.

6 MR. KLAPROTH: And the document is offered to show --
7 it's signed by Peter Brownstein. It's offered to show that on
8 the date that he signed it, he was aware that Ethnic
9 Technologies possessed copyrights.

10 MR. MC DANIEL: That's not the work that's at issue
11 in this case. It's a derivative of the work and I don't think
12 there's any question that the derivative itself is a
13 separately copyrightable work.

14 THE COURT: Is he co-author of the derivative work?

15 MR. MC DANIEL: Well --

16 THE COURT: Was it copyrighted?

17 MR. KLAPROTH: If the derivative work is not at
18 issue, why is Ethnic Technologies being sued?

19 MR. MC DANIEL: It really -- yes, it's derivative
20 work, but I think that in order to say to the jury you signed
21 this and you knew when you were signing it because it says
22 Ethnic Technologies has all copyrights in this, it's not the
23 same programming --

24 THE COURT: I'm going to permit it and it's clearly a
25 license agreement about copyrights about Ethnic Technologies.

Brownstein - Cross

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1 After this cross-examination you want to revisit it, I'll let
2 you do that.

3 Let's take a break, 12:40.

4 (Luncheon recess.)

5 AFTERNOON SESSION

6 THE COURT: Let's get the jury and we'll continue.

7 THE CLERK: All rise.

8 (The following takes place in the presence of the
9 jury.)

10 PETER BROWNSTEIN, previously sworn,
11 resumes the stand.

12 THE CLERK: All rise.

13 THE COURT: Thanks for being prompt, have a seat.

14 A coupling of things before we resume.

15 First of all, in terms of schedule, we're going to go
16 until about three o'clock today because I have a problem and
17 three o'clock tomorrow because of Miss McBride's schedule.

18 It may very well be that we don't finish this case
19 tomorrow and I really -- I tell you that in good faith because
20 in my experience, it's going to take a little bit longer than
21 we have tomorrow to get my instructions together, to deliver
22 my instructions, to have counsel give closing arguments and
23 then to give you enough time to adequately deliberate on a
24 verdict.

25 To me, it's unrealistic to think that all of that can

Brownstein - Cross

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1 happen between now and 3 p.m. tomorrow. What I would suggest
2 is that you plan on being here Tuesday and certainly by then,
3 we all expect the case can be wrapped up and we will not sit
4 on Friday because Miss McBride isn't available. We will not
5 sit Friday, you're free to go to work or do anything you might
6 need to do. Monday is a holiday and the courthouse is closed,
7 so Monday you're free to do whatever you would like to do as
8 well. Then we'll expect you back here Tuesday.

9 Is that acceptable to you? Everybody all right?
10 Good.

11 I don't want to place any artificial rush on the way
12 business is conducted. It's a serious case and I want
13 everybody to have adequate time to do it properly.

14 Now, the second thing I want to tell you is in
15 connection with the case, you have been hearing some testimony
16 and you've seen some exhibits which relate to some prior
17 litigation which the parties may have been involved. There
18 was one litigation where they were on the same side and then
19 there's a subsequent litigation where Mr. Brownstein sued Miss
20 Lindsay and Ethnic Technologies.

21 First of all, I want to tell you that neither of
22 those lawsuits was in this court and they took place in
23 different courts and were resolved according to the terms that
24 are set forth in the various settlement agreements that you've
25 seen.

Brownstein - Cross

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1 All of the terms of those settlements are really not
2 relevant to this case, but the settlement agreements are being
3 offered for the limited purpose, if you use them as such, of
4 demonstrating what Mr. Brownstein's knowledge was, what his
5 state of mind was with respect to the authorship of the
6 copyrights that are in question.

7 So I don't want you to go through any speculation why
8 aren't we being told about how much the case -- there are a
9 lot of details in those settlements. This Court had nothing
10 to do with them, they were somewhere else and they really
11 don't relate to the issues in this case, except for the
12 limited purpose of whether or not you find any portions of the
13 settlement agreement to relate to Mr. Brownstein, his
14 knowledge, state of mind as relating to these copyrights in
15 dispute. Okay.

16 Is that all right, counsel? Is that accurate?

17 MR. MC DANIEL: That's fine.

18 MR. KLAPROTH: That's good.

19 THE COURT: Let's get started.

20 Mr. Brownstein, you're still on the stand.

21 CROSS-EXAMINATION CONTINUES BY MR. KLAPROTH:

22 Q I think we left off with I showed you what has been
23 marked as defendants' exhibit nine.

24 A Yes.

25 Q Could you identify that document for me?

Brownstein - Cross

225

1 A It appears to be one of the licensing arrangements that
2 Gabriel Nelson drew up for Ethnic Technologies. It licensed
3 to E-Tech system to a customer for their use.

4 Q And could you turn to the last page of that document?

5 Do you see your signature at the bottom?

6 A Yes, I do.

7 Q And what's the date of this licensing agreement?

8 A September 25th, 2001.

9 MR. Klaproth: Your Honor, defendants offer
10 defendants' exhibit nine into evidence.

11 MR. MC DANIEL: I have a standing objection.

12 THE COURT: Yes, all right. Subject to your
13 objection, it's in.

14 (D-9 is marked in evidence.)

15 Q Mr. Brownstein, can you turn to the first page of that
16 document?

17 Do you see under the second "whereas" clause, number
18 eight?

19 A Yes.

20 Q Now, I'm going to read number eight. It's a little
21 blurry.

22 "A series of computer programs that apply to the
23 above-mentioned data groups, to lists and data bases which can
24 be supplied on magnetic media and to which ET owns all rights,
25 including copyrights."

Brownstein - Cross

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1 Did I read that correctly?

2 A Yes.

3 Q Now, this is a licensing agreement for Ethnic
4 Technologies, correct?

5 A Yes.

6 Q And Ethnic Technologies is licensing the E-Tech system to
7 a third party?

8 A Yes, it is.

9 Q And that third party in this agreement is Edith Roman &
10 Associates?

11 A Yes.

12 Q And you were the authorized officer for Ethnic
13 Technologies that signed this document?

14 A It was my turn to sign the documents. We would take
15 turns signing the contracts.

16 This wording is what Gabriel would always insist on,
17 but, yes.

18 Q Now, Ethnic Technologies makes money by licensing the
19 E-Tech system to other companies or other parties, true?

20 A It's one of their lines of business, yes.

21 Q So this is a fundamental part of Ethnic Technologies'
22 business, is it not?

23 A Yes.

24 Q Now, the E-Tech system is described in the second whereas
25 clause as a computer process called E-Tech, correct?

Brownstein - Cross

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1 A Yes.

2 Q And on number eight on that "whereas" clause, it
3 references copyrights to which E-Tech, ET, owns all rights.

4 Is that true?

5 A Yes.

6 Q Did you --

7 A Has to be.

8 Q Did you have -- did you ask Tina Lindsay or any other
9 person whether or not you were included as a co-author on any
10 of the copyrights registered in 1996, after you signed this
11 document in 2001?

12 A No.

13 Q Did you conduct any investigation as to whether you were
14 a co-author on the copyrights registered in 1996, after
15 signing this document in September, 2001?

16 A No, why should I?

17 Q I'm going to show you what's been marked as defendants'
18 exhibit ten.

19 Could you identify that for me? Can you tell me what
20 that is?

21 A Yeah. It was a big headache at the time, but it appears
22 to be some sort of agreement between Ethnic Technologies and
23 Wells Fargo.

24 I don't remember the details of this one except that we
25 had quite a few arguments over it.

Brownstein - Cross

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1 Q Could you turn to the last page of that document?

2 You see your signature on that page?

3 A Yes, I do.

4 Q And you signed this document as the CIO of Ethnic
5 Technologies?

6 A Yes.

7 Q And CIO is chief information officer, correct?

8 A Yes.

9 Q Now, what was the date this document was signed?

10 A Appears to be November 11, 2002.

11 MR. Klaproth: Your Honor, defendants offer
12 defendants' exhibit ten into evidence.

13 MR. MC DANIEL: I have the same objection as
14 previous, your Honor.

15 THE COURT: All right. Overruled.

16 (D-10 is marked in evidence.)

17 Q Can you take a look at page one of that document?

18 Do you see the Roman numeral number one?

19 A Yes.

20 Q It states, "Basic system to be licensed to Wells Fargo,"
21 correct?

22 A Yes.

23 Q And is this another licensing agreement between Ethnic
24 Technologies and a third party, in this case, Wells Fargo?

25 A I believe so.

Brownstein - Cross

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1 Q And the E-Tech system was the product that was being
2 licensed?

3 A One of its versions most likely, yes, would have been.

4 Q I'm going to call your attention to the last bullet under
5 Roman numeral one on the first page.

6 It reads, "A series of computer programs that apply the
7 above-mentioned data groups to all lists and data bases which
8 can be supplied on magnetic media and in respect of which ET
9 owns all rights, including copyrights."

10 Did I read that correctly?

11 A Yes.

12 Q And this document was signed by you on November 14th,
13 2002?

14 A Yes.

15 Q Did you ask Tina Lindsay, after you signed this document
16 in 2002, whether you were included as a co-author on any
17 copyrights?

18 A Why?

19 Q Is that a no?

20 A No. Yes, it is a no.

21 Q Did you ask anyone whether you were included as a
22 co-author on the copyrights registered in 1996, after signing
23 this document in 2002?

24 A No.

25 Q Did you conduct any investigation to determine whether or

Brownstein - Cross

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1 not you were the co-author of the copyrights registered in
2 1996, when you signed this document in 2002?

3 A I had no reason to, didn't give it a thought. No, I
4 didn't.

5 Q I'm going to show you what's been marked as defendants'
6 exhibit 11.

7 THE COURT: Are you going to be asking the same
8 questions as to 12 and 13?

9 MR. KLAPROTH: I am.

10 THE COURT: Why don't you hand all of the documents
11 and let him look at them and ask him the questions once?

12 MR. KLAPROTH: Sure.

13 Q I'm going to hand you defendants' exhibit 12 and
14 defendants' exhibit 13.

15 Why don't you take a look at those documents and tell
16 me what they all are, if you can?

17 A They all appear to be site license agreements for that
18 version of the E-Tech system present at the time of signing.
19 Many variations we had over the years.

20 Q You signed defendants' 11, 12 and 13?

21 A Yeah. It was my turn, we took turns as officers of the
22 company signing documents like this.

23 Q And you signed the documents on behalf of Ethnic
24 Technologies, LLC?

25 A Yes.

1 MR. KLAPROTH: Your Honor, defendants offer exhibits
2 11, 12 and 13 into evidence.

3 THE COURT: Same objection, same ruling. They'll be
4 received.

5 (D-11, 12 and 13 are marked in evidence.)

6 Q Exhibit 11 is dated December 11, 2002?

7 A Yes. Yes, it is.

8 Q Exhibit 11 refers to the Ethnic Technology system as a
9 series of computer programs that apply the above-mentioned
10 data groups to lists and data bases which can be supplied on
11 magnetic media and to which ET owns all rights, including
12 copyrights, correct?

13 A Yes. Gabriel always insisted on that being in the
14 contracts.

15 Q You signed that on December 11, 2002?

16 A Yes.

17 Q Exhibit 12, dated May 27, 2003?

18 A Yes, I have that. Yes.

19 Q That document also refers to the E-Tech system and states
20 that E-Tech owns all rights, including copyrights, correct?

21 A Yes.

22 Q And exhibit 13 is dated March 10, 2005?

23 A Yes.

24 Q And that document also deals with licensing the E-Tech
25 system?

Brownstein - Cross

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1 A Yes.

2 Q And the E-Tech system is being referred to as being made
3 up of -- the E-Tech system is owned by Ethnic Technologies,
4 including all copyrights?

5 A That's what it refers to, yes.

6 Q Now, I asked you some questions when we first began about
7 your own copyright registrations.

8 Do you recall that?

9 A Yes.

10 MR. Klaproth: Can I have them marked?

11 THE COURT: They're not marked?

12 MR. Klaproth: I'll just mark them myself.

13 THE COURT: Mark them yourself.

14 MR. Klaproth: I'll call these D-15.

15 (D-15 is marked for identification.)

16 Q I'm going to show you what's been marked D-15.

17 Could you identify that for me?

18 A Yes. It's a registration submitted by me for a couple of
19 programs, TAP 09 and TAP 22.

20 Q And those programs, were they authored while you were
21 working for TAP?

22 MR. MC DANIEL: Objection. No foundation that he's
23 ever been employed by TAP.

24 Q Did you ever work for TAP?

25 A I was a 50-percent owner. I wasn't an employee of TAP.

Brownstein - Cross

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1 Q You did programming for TAP?

2 A As an owner.

3 Q As an owner?

4 A For myself.

5 Q As an owner, did you write these programs while at TAP
6 Systems, Inc.?

7 A Yes. These were additions to the -- yes.

8 Q And these are the same programs that you told us are
9 irrevocably entwined with Tina Lindsay's system?

10 A With Tina -- there isn't any Tina Lindsay system. These
11 are additions to the ethnic identification system.

12 Q Just to be clear, you're seeking co-authorship over the
13 Ethnic Determinant System that's reflected in copyright
14 registrations in 1996. Is that true?

15 MR. MC DANIEL: I object to the question. I think
16 that the issue -- I'll withdraw the objection.

17 A Yes, I did the work there and, yes.

18 Q And that included these programs?

19 A No. These programs came later. These are additions to
20 the system that I co-developed with Tina.

21 Q So these programs can exist independently of Tina
22 Lindsay's system?

23 A Well, they wouldn't work very well independent of the
24 reference files, but, yeah, one of them is simply an inventory
25 program.

Brownstein - Cross

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1 Q So your programs, these programs, the derivative works,
2 the programs you authored are not necessarily linked to Tina
3 Lindsay's system?

4 A They're additions to the system that me and Tina had
5 developed together after we joined with CMR. These are some
6 of the improvements.

7 I don't understand what you're asking me.

8 Q Well, did you identify this document for me?

9 A Yeah, Certification of Registration for copyright of two
10 programs.

11 Q And this is --

12 A That I wrote.

13 Q This is your copyright registration?

14 A Yes.

15 Q D-15.

16 MR. KLAPROTH: Your Honor, I'd like to offer D-15
17 into evidence.

18 MR. MC DANIEL: No objection.

19 (D-15 is marked in evidence.)

20 Q Now, bear me with a moment.

21 Now, on D-15, there's a line for author.

22 Do you see that?

23 A Yes.

24 Q You were the only person listed as the author?

25 A Yes.

1 Q So now in 2009, when you went to register your
2 copyrighted work, it did not include any of Tina's system, did
3 it?

4 A These two programs, while they were add-ons to the ethnic
5 system, didn't use the reference files or the programs that
6 were registered in the original work, no.

7 Q So these programs were not derivative works of the
8 original programs?

9 A Not really. The ethnic -- the idea for TAP 9, no, no,
10 no, not that I remember.

11 Q So these programs that you registered copyrights in have
12 nothing to do with the Ethnic Determinant System?

13 A They have quite a bit to do with the system, they're
14 add-ons to the system, improvements that we made after we
15 joint ventured with CMR, but they weren't part of the original
16 development work and original system. They were add-ons, they
17 were improvements to the system.

18 Q Improvement to the system you claim you and Tina Lindsay
19 were co-authors in?

20 A Yes.

21 Q And when you registered those improvements, you didn't
22 list Tina Lindsay as a co-author, did you?

23 A No, I did these all on my own.

24 Q So your work is separate and distinct from Tina's system?

25 A For these particular programs, yes. Tina didn't even

Brownstein - Cross

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1 want to look at the printout of the inventory program, its
2 structure or anything.

3 Q Now, do you have D-16?

4 A Sixteen? No, I don't have 16.

5 Q I'm going to show you 16.

6 Can you identify that for me?

7 A Yes. Registration form for a series of ethnic programs
8 for an ethnic system.

9 Q And this registration is dated December 23rd, 2009?

10 A Oh, yes. There's the date, yes.

11 Q And this is your Certificate of Registration for these
12 programs?

13 A Yes.

14 MR. KLAPROTH: Your Honor, defendants offer D-16 into
15 evidence.

16 MR. MC DANIEL: No objection.

17 (D-16 is marked in evidence.)

18 Q Now, the computer programs described in D-16, are these
19 also improvements on the original work that you and Tina did?

20 A I'd have to check a couple of these names specifically,
21 but, yeah, this would be derivative work from the original.

22 Q And you're listed as the only author?

23 A Yes.

24 Q Now, during your time as could owners of TAP Systems, you
25 and Tina, you were 50/50 owners?

1 A Yes.

2 Q Did Tina ever receive any royalties for her copyright
3 registrations during that time?

4 A Not that I know about, no.

5 Q You received dollar-for-dollar, the same thing during
6 your ownership at TAP Systems, Inc.?

7 A Until we merged with CMR and money came in, yes. She had
8 invested some money and it was paid back to her. Then we were
9 even; every dollar I got, she got.

10 Q So after Ethnic Technologies is formed, did Tina Lindsay
11 receive any royalties for her copyright registrations?

12 A No, I know of no royalties.

13 Q Did you ever inquire as to whether you would receive any
14 royalties for your co-authorship of the copyrights?

15 A No, I was an owner of the company.

16 Q Did you ever have any discussions with anyone about
17 whether or not you would receive any royalty payments as a
18 co-author of the copyrights?

19 A No. I was getting profits, lots of profits from the
20 company.

21 Q Now, I asked you this earlier. I'm not sure that you
22 answered it.

23 Can you tell me, after the 2000 agreement that created
24 Ethnic Technologies, whether your co-authorship ownership
25 survived that 2000 agreement?

1 A I said yes, at that time.

2 Q You believed following that agreement, you were a
3 co-author of the copyrights along with Tina Lindsay?

4 A Yes. In my opinion, if it hadn't survived, Tina's
5 ownership wouldn't have survived.

6 Q Now, you told us on direct examination that you never saw
7 the Certificates of Registration in 1996?

8 A That is true, to the best of my knowledge. Absolutely
9 true.

10 Q But you had them in a folder with other TAP documents,
11 you just never looked at them?

12 A That -- if you're talking about the lawsuit folder, Tina
13 gave me that to store up. I put a rubber band around it and
14 just threw it in a drawer.

15 Q So are you talking about the lawsuit, 1998?

16 A With LSDI, yes.

17 Q So now you were named in the complaint in that lawsuit?

18 A Yes.

19 Q And you had an attorney?

20 A Same one, Gene Hurst, same as Tina.

21 Q And Tina gave you documents related to that lawsuit which
22 included the Certificates of Registration?

23 A If they were there, but this was after we had settled,
24 when we were cleaning up, just shoved in a folder and put
25 away.

1 Q And you settled in 1998?

2 A Yeah. It was -- the settlement, Tina recommended it,
3 said it was the best thing. We were so busy building Ethnic
4 Technologies.

5 Q And so when you put the documents, including the
6 copyright registrations in the drawer, you never read them?

7 A No. Why bother?

8 Q Never thought to read them? Did you ever think to read
9 them?

10 A Why? All that documentation, I didn't really know what
11 was involved. Tina took point on the lawsuit, she had
12 meetings with our lawyer that I didn't attend. I didn't think
13 I needed to attend and we were doing it on a shoestring
14 financially.

15 Q Now, your lawyer in that lawsuit was Gene Hurst?

16 A O. Gene Hurst.

17 Q And he was your personal lawyer prior to that lawsuit,
18 wasn't he?

19 A Yes.

20 Q So you referred him to Tina Lindsay to represent you
21 both?

22 A I introduced him, yes.

23 MR. KLAPROTH: Nothing further.

24 THE COURT: All right.

25 Any redirect?

Brownstein - Redirect

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1 MR. MC DANIEL: I do, your Honor.

2 THE COURT: Go ahead.

3 REDIRECT EXAMINATION BY MR. MCDANIEL:

4 Q Can you put the registration certificate back up?

5 Mr. Brownstein, let's start with the registration
6 certificates that Mr. Klaproth showed you.

7 Can I see the reference work at the bottom of it?

8 Right here, that's good.

9 "Limitation of copyright claim," do you see that, Mr.
10 Brownstein?

11 A Yes.

12 Q Underneath, it says "previous registration and year"?

13 A Yes.

14 Q And it lists a couple of previous registrations and
15 years.

16 Do you know what those are?

17 A I suspect they're the previous registrations that Tina
18 submitted to the copyright office.

19 Q Mr. Brownstein, I'm going to show you previously exhibit
20 two which is previously marked and is in evidence.

21 If you look at the upper right-hand corner, there's a
22 number on that document.

23 Do you see that?

24 A Yes.

25 Q Do you find that number on your registration certificate?

1 A Second one down.

2 Q And I'd like to show you plaintiff's exhibit four which
3 is actually marked in evidence.

4 Take a look in the upper right-hand corner and let me
5 know if you see that number on your registration certificate.

6 A It's the first one next to previous registration and
7 year.

8 Q When you filed this certificate, why did you include the
9 prior registrations?

10 I'll rephrase that. You look puzzled.

11 A I'm surprised, because they were improvements and
12 derivatives of those previous works.

13 Q They were part of the work.

14 Would that be accurate?

15 A Yes, part of the whole, addition to the whole.

16 Q We also talked about -- Mr. Klaproth had just asked you
17 about the Certificates of Registrations over the LCID just
18 before he finished.

19 Do you recall that?

20 A Yes.

21 Q If you had them?

22 A Yes.

23 Q Did you have a copy of the second Certificate of
24 Registration at the time that you filed this lawsuit?

25 A Actually, it was a surprise to me, but I did.

Brownstein - Redirect

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1 Q For the second or the first?

2 A You know, I don't remember which one was found among the
3 papers of the LSDI lawsuit.

4 MR. MC DANIEL: Can I mark a copy of the complaint,
5 Judge?

6 THE COURT: Copy of the complaint?

7 MR. MC DANIEL: To refresh his recollection, just so
8 the record is clear.

9 Q Mr. Brownstein, I've just marked this as P-14 for
10 identification.

11 I ask you to take a look at it and tell me, first,
12 whether this helps refresh your recollection as to -- sorry, I
13 marked the wrong one.

14 I withdraw the line of questions.

15 Let's take a look, if we could, first at what was
16 entered into evidence as D-1.

17 Now, the date of this document I believe you testified
18 was August, 1997. Is that correct?

19 A Looks like it's marked August.

20 Q Take a look at the last page if you need to.

21 A I'm having trouble reading this.

22 What is that stamp up there on the actual filing date?
23 I can't read it.

24 Q Let me show you my copy.

25 Do you have D-1 up there?

Brownstein - Redirect

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1 A I should?

2 Okay, let me take a look.

3 Here it is.

4 It looks -- I can make out an 11 and 97. Can't make
5 out the month.

6 THE COURT: Look at the last page of it. It's your
7 affidavit.

8 What was the date you signed that on?

9 THE WITNESS: August 8, 1997.

10 Q And at that time had the second copyright registration
11 been completed?

12 A Yes.

13 Q Okay.

14 Now, where is the second copyright registration
15 mentioned in this document?

16 A Doesn't appear to be mentioned.

17 Q Why was it not mentioned?

18 A Well, I can only ascertain it was part of our, me and
19 Tina's or mostly Tina's, plan on avoiding giving the Raskin's
20 information.

21 Q And who -- the lawyer you said was Gene Hurst?

22 A Gene Hurst.

23 Q Who was the person who dealt most with the lawyer in
24 connection with this LSDI litigation?

25 A Tina.

Brownstein - Redirect

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1 Q And did you draft this document that you were shown to as
2 D-1?

3 A No. I may have explained to Gene some of what happened.
4 I definitely didn't draft it.

5 Q Let's take a look, if we could, at D-7.

6 A Yes.

7 Q And if I could have the second page of the document,
8 please.

9 Directing your attention to paragraph two?

10 A Yes.

11 Q Says, the parties acknowledge and agree all parties have
12 made a claim to the right to exclusive ownership of EDS, an
13 Ethnic Determinant System, knowledge and rule exception basis
14 and any aspect thereto.

15 What is that referring to, do you know?

16 A That would be the LCID system.

17 Q And in paragraph three, where it says "Tina Lindsay
18 obtained a Certificate of Registration from the United States
19 Copyright Office, effective February 12, for EDS," what is
20 that referring to?

21 A Well, it is as LCID, in the next line.

22 Q I'm going to ask you the same question as to what is
23 being referred to in paragraph four.

24 A Yeah, the same system.

25 Q Okay.

Brownstein - Redirect

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1 And finally -- now, if you could jump forward to
2 paragraph 18, which is on the fifth page of the document?

3 A I have it.

4 Q If you could blow that up?

5 It says here, "Lindsay, Nelson, Brownstein, ET, TAP
6 and CMR represent and warrant to the other parties to this
7 agreement that they are the sole owners of the copyrights and
8 publications identified in two, three, four, five and six."

9 What was that referring to, do you know?

10 A It was referring to the LCID system and the data files
11 that Ginger Nelson through CMR owned, called Ambsel, I think
12 and everything related to that.

13 Q Okay.

14 So it makes reference to paragraph two.

15 Can you show paragraph two again?

16 Paragraph two is the LCID.

17 Paragraph three.

18 Paragraph three is the LCID and the same was true for
19 paragraph four and five.

20 A Five is CMR's work.

21 Q How did you come to execute this document?

22 A Well, the opposing lawyer for LSDI arrived in the offices
23 of Ethnic Technologies, with these copies of these papers for
24 us to sign. Me, Tina, Gabriel were gathered together.

25 Q Was there -- did you have counsel present?

Brownstein - Redirect

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1 A No.

2 Q Did anyone explain the document to you before you signed
3 it?

4 A That it was a settlement agreement, but other than that
5 guaranteed we wouldn't have any problems with LSDI, we could
6 go ahead with our business. Other than that, no, no.

7 Q How long did you spend with the document before you
8 signed it?

9 A I did talk it over with my partners. I was reluctant to
10 sign it, but Tina kept saying the cost and time. Ethnic
11 Technologies was taking off at that time and we were so busy,
12 settlement was a good idea instead of fighting it out in
13 court, so I signed it.

14 Tina was the person I considered with the most
15 managerial corporate knowledge at the time, so I signed it and
16 the lawyer left.

17 Q The lawyer waited for you to sign it?

18 A Yes, he was present during our discussions.

19 Q The adversary lawyer?

20 A Yes.

21 Q These license agreements that got signed from
22 time-to-time, you were shown a number of them.

23 Do you recall those?

24 A Yes.

25 Q Did anyone else sign them?

1 A Tina did, Gabriel did, we all did.

2 Q And who drafted them?

3 A Gabriel.

4 Q And what discussion was there about the form of the
5 agreement?

6 A At the beginning, quite a bit because Gabriel's company's
7 contribution to the system was just reference files. She
8 always insisted that they be separately indicated in all
9 contracts and since she owned the copyright there, that
10 copyright would be indicated in all contracts.

11 Like other software systems, we couldn't just say we're
12 licensing the E-Tech software system. This description in one
13 of all the contracts shown had to be put in so eventually --
14 since she wrote all the contracts, me and Tina didn't see any
15 of her relented. It bought peace on that subject to the
16 company and at the time didn't appear to cause any harm.

17 Q What discussions did you and Tina have about that
18 language as it relates to your contribution?

19 A The only discussion I had with Tina was it wasn't right
20 because all the licenses I had ever read for software systems
21 didn't describe the inner workings of the system like this.
22 Other than that, it was just about the disagreements with
23 Gabriel.

24 Q Now, you said before that you had some -- there was some
25 questioning earlier about copies of things that you got back

Brownstein - Redirect

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1 from Ethnic Technologies after you left?

2 A Oh, yes.

3 Q Okay.

4 And you were asked if you had received any -- if you
5 picked up any computer programs or any floppy disks.

6 Do you recall that line of questioning?

7 A Yes.

8 Q Okay.

9 Did you subsequently receive any floppy disks from
10 Ethnic Technologies?

11 A Yes, a whole little shopping bag of disks was delivered
12 to my lawyer's office and I picked them up.

13 Q Did you try and look to see what was on those?

14 A Yeah, there was nearly 40 of them.

15 Q Okay.

16 What did you discover when you looked at the disk?

17 A Except for two of them, they had all been mass bulked
18 erased. The formatting on the disk that allow you to look at
19 a disk drive wasn't even present on the disks.

20 Q Did you go through all 40 of them?

21 A It was just under 40, but yes, I did.

22 Q Now, when you say that the formatting was gone, what
23 significance does that carry?

24 A All disks, all magnetic disks in your PCs, in anything
25 have little electronic indicators written on it. The disk is

1 sort of laid out like a design, how the data is to be put on,
2 where the directory is going to go and so forth. It's true in
3 your disks in your PC, in mainframes. It's been like that
4 since magnetic disks were used. That's what I meant by
5 formatting. They're just electronic marks written on a disk
6 to allow the computer to work with it.

7 Q Was it an indication that some process had been performed
8 on those disks?

9 A Yes.

10 Q What was that?

11 A As I said, bulk erase. Some form of magnetic device was
12 run across the disk erasing everything, not just the data on
13 the disk, but the formatting as well.

14 Q Has Tina Lindsay ever indicated to you whether she
15 considers yourself to still be the owner of LCID or any part
16 of it?

17 A Personally?

18 Q Personally.

19 A No.

20 Q I'd like to show you a document that's marked as
21 plaintiff's exhibit 12.

22 THE COURT: What is it?

23 MR. MC DANIEL: It is a software license agreement
24 executed by Tina Lindsay.

25 THE COURT: Is this within the scope of

Brownstein - Redirect

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1 cross-examination?

2 MR. KLAPROTH: I didn't use it.

3 MR. MC DANIEL: I think it is. He didn't use it but
4 he questioned him about it.

5 THE COURT: How much longer do you have?

6 MR. MC DANIEL: This was going to be the end.

7 THE COURT: Okay.

8 Q Can you just take a look at that real quickly?

9 THE COURT: What's your question?

10 Q Mr. Brownstein, do you recognize that document?

11 A Truly, I don't.

12 Q Thank you.

13 THE COURT: That's it?

14 MR. MC DANIEL: That's it.

15 THE COURT: Anything else?

16 MR. MC DANIEL: Nothing further.

17 THE COURT: Anything further?

18 MR. KLAPROTH: No.

19 THE COURT: Thank you.

20 You can step down, Mr. Brownstein.

21 Let's take five minutes, folks.

22 THE CLERK: All rise.

23 (Jury is excused and the following takes place out of
24 the presence of the jury.)

25 THE COURT: Five minutes.